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Mr Justice Catron

Marks

SUPREME COURT OF THE UNITED STATES.

No. ~~236.~~ 168.

THE UNITED STATES, APP'TS,

vs.

HENRY W. HALLECK, ARCHIBALD C. PEACHY, AND T. WARREN VAN WINKLE, EXECUTORS OF J. L. FOLSOM, DECEASED.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

523

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"Rio de los Americanos."

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1 *Transcript of the proceedings in case No.* 321.

JOSEPH L. FOLSOM *et al.*, claimants,
vs.
THE UNITED STATES, defendants.
} For the place named "Rio de los Americanos."

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3 *Index of proceedings before board of U. S. land comm'rs.*

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this fourth day of September, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Joseph L. Folsom *et al.*, for the place named "Rio de los Americanos," was presented, and ordered to be filed and docketed with No. 321, and is as follows, to wit.

(*Vide* page 7 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *December* 21, 1852.

In case No. 321, Joseph L. Folsom *et al.*, for the place named "Rio de los Americanos," the deposition of Alonzo C. Wake-
4 man, a witness in behalf of the claimants, taken before Commissioner Hiland Hall, was filed.

(*Vide* page 13 of this transcript.)

In the same case, the deposition of John A. Sutter, a witness in behalf of the claimants, taken before Commissioner Hiland Hall, with document marked No. 1, annexed thereto, was filed.

(*Vide* page 13 of this transcript.)

SAN FRANCISCO, *February* 3, 1853.

In the same case, the counsel for the claimant presented a supplemental petition, which was ordered to be filed among the papers in this case.

(*Vide* page 9 of this transcript.)

SAN FRANCISCO, *April* 11, 1853.

Case No. 321, on motion of the U. S. asso. law agent, was ordered to be placed on the trial docket.

Case No. 321 called. The counsel for the claimants, Mr. Halleck, read the petition and the papers in evidence; the U. S. associate law agent filed his brief, submitted and taken under advisement
5 by the board.

SAN FRANCISCO, *April* 22, 1853.

Commissioners Hiland Hall and Harry J. Thornton returned to the secretary the papers appertaining to case No. 321 and others, which they had under advisement; after which they withdrew, and ceased to act as commissioners and members of this board.

SAN FRANCISCO, *July* 9, 1853.

Case No. 321, on motion of the U. S. law agent, was ordered to be placed on the trial docket.

SAN FRANCISCO, *August* 2, 1853.

Case No. 321 called; ordered to the foot of the docket.

SAN FRANCISCO, *May* 2, 1854.

Case No. 321, on motion of the counsel for the claimants, was ordered to be placed at the foot of the 1st class cases on the trial-docket.

SAN FRANICSCO, *June* 2, 1854.

In the same case the deposition of George F. Wyman, a witness in behalf of the claimants, taken before Commissioner Peter
6 Lott, was filed.

(*Vide* page 14 of this transcript.)

SAN FRANCISCO, *June* 15, 1854.

In the same case the deposition of William Buzzell, a witness in behalf of the claimants, taken before Commissioner Peter Lott, was filed.

(*Vide* page 17 of this transcript.)

SAN FRANCISCO, *June* 21, 1854.

In the same case the deposition of W. R. Isaacks McKay, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, was filed.

(*Vide* page 24 of this transcript.)

SAN FRANCISCO, *June* 23, 1854.

In the same case the deposition of John A. Sutter, a witness in behalf of the United States, taken before commissioner Peter Lott, was filed.

(*Vide* page 28 of this transcript)

SAN FRANCISCO, *July* 8, 1854.

In the same case the depositions of J. J. Warner and Charles V. Gillespie, witnesses in behalf of the claimants, taken before Commissioner Peter Lott, were filed.

7 (*Vide* pages 31 and 34 of this transcript.)

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SAN FRANCISCO, *July* 10, 1854.

In the same case the deposition of Joseph P. Thompson, a witness in behalf of the claimants, taken before Commissioner Peter Lott, was filed.

(*Vide* page 32 of this transcript.)

SAN FRANCISCO, *July* 14, 1854.

In the same case the deposition of A. D. Patterson, a witness in behalf of the United States, taken before Commissioner Alpheus Felch, was filed.

(*Vide* page 36 of this transcript.)

SAN FRANCISCO, *July* 18, 1854.

In the same case the counsel for the claimants filed a certain paper marked M, being a copy of the proceedings of the district court of the 3rd judicial district of the State of California, as evidence in this case, in behalf of the claimants.

(*Vide* page 119 of this transcript.)

SAN FRANCISCO, *July* 21, 1854.

In the same case the deposition of John Bidwell, a witness
8 in behalf of the claimants, taken before Commissioner Peter Lott, was filed.

(*Vide* page 37 of this transcript.)

In the same case the counsel for the claimants filed the following supplemental petition, with a stipulation annexed thereto.

(*Vide* page 11 of this transcript.)

SAN FRANCISCO, *August* 2, 1854.

In the same case the counsel for the claimant read the papers in evidence, commenced the argument, and continued for to-morrow.

In the same case the depositions of William Carey Jones and José S. Berreyesa, witnesses in behalf of the claimants, with document M. G. T. annexed to the deposition of said Jones, taken before the commissioners sitting as a board, were filed.

(*Vide* pages 40 and 41 of this transcript.)

In the same case the U. S. law agent filed the following bill of objections, to wit.

(*Vide* page — of this transcript.)

9 SAN FRANCISCO, *August* 3, 1854.

In the same case the counsel for the claimants resumed argument, and concluded.

Case submitted on briefs.

SAN FRANCISCO, *June* 12, 1855.

In the same case, Commissioner R. Aug. Thompson delivered the opinion of the board, confirming the claim.

(*Vide* page 183 of this transcript.)

And the following order was made, to wit.

(*Vide* page 206 of this transcript.)

Petition of J. L. Folsom.

To the honorable commissioners to settle private land claims in California:

The petitioners, Joseph L. Folsom and Anna Maria Spark, respectfully show:

That on the 29th day of August, A. D. 1844, William A. Leidsdorff petitioned the governor of California for a grant of a certain tract of land on the bank of the American river, comprising eight
10 square leagues, which petition was referred by the governor to the proper subordinate authorities, and received their favorable reports, whereupon Manuel Micheltorena, governor of California, by virtue of authority in him vested, on the eighth day of October, A. D. 1844, decreed to said Leidsdorff the tract of land so petitioned for, situate in the present county of Sacramento, and containing eight square leagues, with the boundaries described in the grant and corresponding map, all of which is shown by the original espediente, a certified copy of which is submitted herewith, marked "A," with a translation, marked "B." The petitioners also submit herewith a copy of the original title issued to said Leidsdorff, marked "C," with a translation, marked "D"

And the petitioners further represent that said grant was afterwards duly confirmed, and that the possession of the land so granted was duly given to said Leidesdorff.

That the said William Leidsdorff died on or about the 18th
11 day of May, 1848, in the city of San Francisco, leaving one parent surviving, to wit: his mother, Anna Maria Spark, of the island of Santa Cruz, in the Danish West Indies, who was his sole heiress.

That on the 17th day of September, A. D. 1849, the said Anna Maria Spark did sell and convey to the petitioner Folsom one-half of the effects, real, personal, and mixed, belonging to the succession of the said William Alexander Leidsdorff, and situate and being in the then Territory and now State of California, as will appear by the conveyance herewith filed, marked Exhibit "E."

That the aforesaid tract of land has not been surveyed by the surveyor general of the United States, but that it has been surveyed by a duly authorized surveyor of California. That its boundaries are fully shown on the map in the espediente, and are well known.

That the said land has been more than eight years occupied and possessed by the said Leidesdorff and the petitioners, and now is in the occupation and possession of the petitioners.

That they know of no conflicting claim.

12 That they rely for confirmation of title upon the original papers, copies of which are submitted herewith; upon the records and minutes relating thereto in the archives of the former government of California, and upon such other and further proofs as they may be advised are necessary.

Wherefore they pray the commissioners to confirm to them the aforesaid grant of land.

By their atty's,

HALLECK, PEACHY & BILLINGS.

Filed in office Sept. 4th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Records of Petitions, vol. 1, pages 216 and 217.

GEO. FISHER, *Sec'y.*

Supplementary petition.

Before the U. S. land commissioners in the claim of J. L. Folsom and Anna Maria Spark, (No 321,) on commissioners' docket.

13 And now come Joseph L. Folsom and Anna Maria Sparks, the petitioners in this case, and file this their supplementary petition, respectfully representing that, since the filing the petition in this case, the petitioner Anna Maria Sparks, by her attorneys in fact, has sold and conveyed all her right, title, and interest, in the lands claimed in said patition, to the petitioner, Joseph L. Folsom, viz: on the 31st day of December, A. D. 1852, which is shown by the original deed of conveyance with the original letters of attorney, copies of which are submitted herewith, marked "A," "B," and "C."

Wherefore the petitioners pray that the said land may be confirmed to the petitioner Joseph L. Folsom, who is now the sole owner thereof.

By their attorneys,

HALLECK, PEACHY & BILLINGS.

Filed in office Feb'y 3rd, 1853.

GEO. FISHER, *Sec'y.*

Recorded in vol. 1 of Petitions, on page 518.

GEO. FISHER, *Sec'y.*

14 The petitioner Joseph L. Folsom, by leave of the board, and with the consent of the land agent of the U. S., hereby makes his amended supplementary petition, as follows, (the same being in addition to the said supplementary petition of the said Folsom and Anna Maria Spark which was filed in this case on the 3d February, 1853:)

Amended petition.

And in this his amended supplementary petition, the said Joseph L. Folsom alleges that on the 31st day of December, 1852, a decree was made by the U. S. district court for the northern district of Cali-

fornia, in a suit thereon pending between the said Joseph L. Folsom, complainant, and the said Anna Maria Spark, Anna Christiana Gendroup, and Fredericka Cordelia Leidesdorff, defendants, whereby it was adjudged, ordered, and decreed that the defendant Anna Maria Spark should make specific performance of her contract with Joseph L. Folsom, as set forth and contained in the complaint and exhibits filed in said case; and that the said court further appointed Matthew Hall McAllister and Edward Norton commissioners to make
15 a deed conveying to the said Folsom all the right, title, and estate of the said Anna Maria Spark in and to the effects, both real and personal, constituting and belonging to the successor of the late William Alexander Leidsdorff, and that the said commissioners did make the deed and conveyance as directed by the said decree on the said 31 day of Dec'r, 1852, which action of the commissioners was duly approved and confirmed by the said court, all of which will more fully appear by the exhibit herewith filed, marked A. Z.

HALLECK, PEACHY & BILLINGS,
Att'ys for Jos. L. Folsom.

I consent that the foregoing amended petition may be filed and considered with the original petition, without any formal order of the board in this case.

J. H. McKUNE,
Law Agent.

Filed in office July 21, 1854.

GEO. FISHER, *Sec'y.*

16 *Dep. of Alonzo C. Wakeman.*

SAN FRANCISCO, *Dec'r 21st*, 1852.

On this day, before Com'r Hiland Hall, came Alonzo C. Wakeman, a witness in behalf of the claimant, Joseph L. Folsom *et al.*, petition No. 321, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

In answer to inquiries by counsel for claimants, the witness testified as follows:

My name is Alonzo C. Wakeman; my age is thirty-two years; I have lived in California since January, 1850.

I am acquainted with the land claimed by the petitioners in this case; it is situated on the Rio de los Americanos, above Capt. Sutter's lands. I was first on it in 1851. Capt. J. L. Folsom was then in occupation of the land. He had on it a two-story building, a barn, and two adobe houses. These buildings have been under lease from Capt. Folsom ever since, and are so at the present time. I am knowing to the payment of the rents to Captain Folsom by the ten-
17 ants occupying these buildings and lands.

ALONZO C. WAKEMAN.

Notice acknowledged. No questions asked.

R. GREENHOW,
Ass't Law Agent.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Dec. 21st, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B , vol. 2, p. 361.

GEO. FISHER, *Sec'y.*

Dep. of John A. Sutter.

SAN FRANCISCO, *Dec'r* 21*st*, 1852.

On this day, before Com'r Hiland Hall, came John A. Sutter, a witness in behalf of the claimants, Joseph L. Folsom *et al.*, petition No. 321, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimants the witness testified as follows:

My name is John A. Sutter; my age is about 49 years; and
18 I resided in California since 1839. I am acquainted with the handwriting of Manuel Micheltorena and Manuel Jimeno. Their signatures to the paper before me, and attached to this deposition, marked H. H. No. 1, purporting to be a grant to William A. Leidsdorff, are their genuine signatures.

I know the land described in this grant; it lies next to my land. Leidsdorff built a house on it in the latter part of 1844 or beginning of 1845. He also cultivated a large tract of this land, and had a fine stock of cattle on it. The house was still standing when I last visited the place. As alcalde of that district I gave him juridical possession. I cannot remember the date, but I very well remember giving him the juridical possession under his title from Micheltorena. Leidsdorff died in 1848, just after the gold was discovered.

JOHN A. SUTTER.

Notice acknowledged, and no question asked.

R. GREENHO,
Asso'te Law Agent.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

19 Filed in office Dec'r 21, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 2, p. 354.

GEO. FISHER, *Sec'y.*

Dep. of George F. Wyman.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *June* 2, 1854.

This day personally came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, George F. Wyman, a witness on be-

half of the claimants, in case No. 321 on the docket of said board, wherein Joseph L. Folsom *et al.* are claimants; and said witness being duly sworn, on oath deposed in English as follows, to wit:

Questions by claimant's counsel.

1st question. What is your name, age, and residence?

Answer. My name is George F. Wyman; my age, 35 years; my residence, San Francisco county, California.

20 2nd question. Do you know the tract of land called "Rio de los Americanos, on the American fork, granted to William A. Leidsdorff; if yea, how long have you known it, and what do you know of its occupation and cultivation?

Answer. I do know the place, and have known it since 1842. It was occupied in the spring of 1845 by a man by the name of William Buzzell, who was employed by William A. Leidsdorff; he built an adobe house on it in the summer of 1845, and enclosed a large field by a ditch, 35 or 40 acres. In the spring before he built the house, he sowed nearly all the field in wheat. He lived there in a shanty before the adobe house was built. He had horses, stock cattle, and breeding mares on it, all of it belonging to Mr. Leidsdorff. He had a garden spot inclosed the same season by a brush fence, which was cultivated; he had vegetables in it. Mr. Buzzle continued there in this way till 1847, occupying, and cultivating, and keeping the stock for Mr. Leidsdorff.

21 3rd question. Do you know the boundaries of said ranch? If yea, state them.

Answer. I do not know them. I only know the starting point of the division line between this tract and Capt. Sutter's. The starting point is an oak tree, standing on a bluff bank of the American fork—a blazed and marked tree—close to where Capt. Sutter started to take out his mill-race.

Cross-examined by U. S. law agent.

1st question. How do you know that point you have mentioned to be the boundary of this tract?

Answer. Mr. John Bidwell told me so.

2nd question. Were you acquainted with said Leidsdorff; if yea, when first, and how long have you known him?

Answer. I knew him first in 1843, and knew him till the time of his death.

3rd question. Where did said Leidsdorff live in 1844 and 1845, and in what was he employed?

22 Answer. He lived in those years in San Francisco. I do not know his employment.

4th question. How often and on what occasions did you see him in those years, *and on what occasions?*

Answer. I cannot say how often I did see him. I saw him at his ranch, on the American fork, in 1845, and at Capt. Sutter's fort in the same year. I saw on two or three different occasions in 1844. I saw him in 1843 and 1846.

5th question. Did you see him on his ranch while the house was being built there in 1845, of which you have spoken?

Answer. No.

6th question. How do you know those who were building the house were building it for Leidsdorff and not for themselves?

Answer. Mr. Buzzle told me he was building it for Mr. Leidsdorff.

7th question. Why did Leidsdorff make use of it for himself?

23 Answer. I cannot say.

8th question. How do you know the cattle on the place belonged to Leidsdorff?

Answer. Mr. Buzzle told me so.

9th question. On what terms did Mr. Buzzle take care of the land and keep the cattle?

Answer. I don't know.

G. F. WYMAN.

Subscribed and sworn to before me on this 2nd day of June, A. D. 1854.

PETER LOTT,
Commissioner for taking testimony, &c.

Filed in office June 2, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol 4, p. 511.

GEO. FISHER, *Sec'y.*

24 *Dep. of W. Buzzle.*

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *June* 14, 1854.

This day personally came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Willard Buzzle, a witness in behalf of the claimant in case No. 321 on the docket of said board, wherein Joseph L. Folsom is claimant, and said witness being duly sworn on oath, deposed in English as follows, to wit:

The U. S. law agent is present.

Questions by claimant's counsel.

1st question. What is your name, age, and residence?

Answer. My name is William Buzzle; my age, 37 years; my residence, San Francisco county, California.

2nd question. When did you come to California?

Answer. In the fall of 1841, and have lived here ever since.

25 3rd question. Do you know the rancho claimed in this case called "Rio de los Americanos," and were you acquainted with the late William A. Leidsdorff?

Answer. I am acquainted with the rancho, and know said Leidsdorff. He died in 1848.

4th question. Did you ever live on the said rancho? If yea, when did you go there to live, how long did you live there, and what was your business or occupation while there?

Answer. I did live there. I went on to the ranch in 1845. I remained living there till July, 1847, and I was engaged in farming and stock-raising for Capt. Leidsdorff.

5th question. Who sent you to live on the ranch, and in whose employment were you during the time you lived there?

Answer. Capt. Leidsdorff sent me there, and I was in his employment while there.

6th question. State what you know of the settlement and
26 occupation of the said rancho, when it was begun, and what improvements and cultivation was made there.

Answer. I went there in the spring of 1845 with my family, put in a garden and then commenced building houses. I put up four adobe houses on the place in that year, (1845,) enclosed 100 acres of ground with a ditch, built a corral and brought on 500 head of cattle, mostly cows, and a manada of 30 mares, besides tame horses enough to take care of the cattle. All this stock belonged to Capt. Leidsdorff; besides 150 head of sheep and some ten or fifteen head of hogs, which I took there the same year. In the fall of 1845 I commenced sowing the 100-acre field with wheat, barley, corn, potatoes, &c. I lived with my family in one of the houses from early in July, 1845, when it was furnished. I then built an adobe grainary, an adobe house for the Indians, and an adobe hen-house. I farmed the place
27 and took care of the stock while I remained there. I was absent myself in the war from July, 1846, leaving my family and the hands at work on the place. I was absent about seven months, and then returned; then a man by the name of Howell came and took my place under Leidsdorff, the same as I had been.

7th question. At whose expense were all these improvements made on the place of which you have spoken?

Answer. At the expense of Capt. Leidsdorff.

8th question. Do you know the western boundary of this rancho? If yea, state what it is.

Answer. I do know it. A tree standing on the American fork about ½ a mile down the river below the dwelling-house; an oak tree, marked standing near an old Indian rancherio, was on the western line of the rancho; the tree was marked by being blazed and hacked with an axe on the south side. From the river the line ran in a southerly direction from that tree very near south. The lands west of that
28 line belonged to Perry and Wyman, who had bought of Sutter. That line ran south about 6 or 7 miles, as near as I could guess at the distance, to a low place on the prairie—a creek in winter and dry in summer.

Cross-examined by U. S. law agent.

1st question When did you first know Capt. Leidsdorff, and where did you and he each reside at that time?

Answer. I first knew him in the spring of 1845. He then lived in San Francisco, and I lived in the Pueblo of San José.

2nd question. How long did you each live where you then lived, and where did you remove to from those places?

Answer. Capt. Leidsdorff remained in San Francisco till he died,

and I came immediately to San Francisco with my family, to get ready to go on to Leidsdorff's land, which I did about the last of April, 1845.

29 3rd question. Had you any written contract with said Leidsdorff when you went on the land on the American river?

Answer. I had. It was burnt in my house with other papers, in Stockton, in 1848.

4th question. What were the terms of that contract?

(4th question objected to by claimant's counsel, as irrelevant.—P.L.)

Answer. I took the ranch for 4 years. He was to furnish all stock, see at all the expenses, and I was to receive one-third of the increase of the stock and of the crops during the term, and at the end of the 4 years I was to deliver up the place to him with all the improvements and stock, taking my share of the increase, &c.

5th question. What expense did Leidsdorff incur in the settlement of said place, and how did he pay it?

(5th question objected by claimant's counsel, as irrelevant.—P. L.)

Answer. I cannot tell how much it all might have cost him.

30 He used to send me goods up from San Francisco, to pay the Indians I have hired to work there, and he sent me lumber to make the improvements. He paid for part of the stock in money, and I do not know whether he bought or traded for the balance.

6th question. Who selected the sites for the buildings you put there?

Answer. Capt. Leidsdorff told me where to build. He was there while I was building.

7th question. When did you first see the blazed tree you speak of, and under what circumstances?

Answer. In 1845, when I first went up there, Capt. Sutter sent a man to show me where the line commenced, and he showed me that tree; afterwards Leidsdorff pointed out the same tree to me as his line, and showed me where the line run out in the prairie.

31 8th question. Who was with you when Leidsdorff showed you where the line ran out in the prairie?

Answer. I think Capt. Nathan Spear was with us. If I recollect right, he came up there from San Francisco with Leidsdorff. We were on horseback.

9th question. What landmarks did you find on the ground to guide you to that low piece of ground you have mentioned to which the line ran?

Answer. I think there was a stake at the edge of the timber as we went out into the prairie, on the line between Sutter's land and Leidsdorff's; I do not know what kind of a stake it was; I suppose, likely it was oak.

10th question. Could you see that stake from the point at the blazed tree?

Answer. No.

11th question. Had you any difficulty in finding it?

Answer. None.

12th question. When you started did you start for the stake;

32 if yea, why?

Answer. Yes, because they said the line ran south, and we went as near south as we could.

13th question. Was anything said about the stake before you started; if yea, what?

Answer. I told them I knew there was a stake at the edge of the woods, and we started for it; I had been there before with Leidsdorff and had seen the stake.

14th question. State how often, and when you had seen the stake before that.

Answer. I had seen it some 3 or 4 times. I had seen it some 4 or 5 months before.

15th question. For what object did you trace that western line?

Answer. I asked Leidsdorff, when we were out looking at the cattle, how far his western line ran out in the prairie, and he
33 rode out there to show me.

16th question. Had Leidsdorff ever seen that stake before?

Answer. I do not know.

17th question. Did he guide you or you him to the stake at the time you speak of?

Answer. I told him where it was when I heard him and Spear talking about a stake being there; and then we all rode to the stake.

18th question. What was the stake stuck there for?

Answer. It was stuck there to show Wyman and Perry, to whom Sutter had sold, where Sutter's line was between him and Leidsdorff.

19th question. How do you know it was stuck there for that purpose?

Answer. Capt. Sutter told me so himself.

20th question. When, where, and in whose presence did he tell you so?

34 Answer. It was at the fort, if I recollect right, when we were talking of the lines, he told me this stake was on the line. The particular time, or who might have been present I cannot now recollect.

21st question. What object had you in going beyond that stake, and what guided you in the direction you went?

Answer. Mr. Leidsdorff had a map of his place with him, and the boundaries were marked out; and we went as far as his line ran.

22nd question. How did you learn from the map how far the line ran?

Answer. I think they told me it ran two leagues, and we went out about as far as that, tho' we did not measure it; we went as near south as we could go by guess.

23rd question. Is that all you know of that boundary?

Answer. Yes; that's pretty much all I knew of it.

Re-examined by claimants' counsel.

35 1st question. How far is that tree from Sutter's fort?

Answer. We used to call it 7 miles. It has since been called the ten-mile house from Sacramento.

Cross-examined by U. S. law agent.

1st question. Is any part of the Leidsdorff ranch a mining country?

Answer. When I was there last, in 1850, there was no mining on it that I ever knew of; since that I do not know how far down they may have found mining ground.

WILLARD BUZZLE.

Subscribed and sworn to before me on this 15th day of June, A. D. 1854.

PETER LOTT,
Commissioner for taking testimony.

Filed in office June 15, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 4, p. 585.

GEO. FISHER, *Sec'y.*

36 *Dep. of W. R. Isaacs Mackay.*

UNITED STATES LAND COMMISSION,
San Francisco, June 21, 1854.

On this day, before Commissioner Alpheus Felch, came W. R. Isaacs Mackay, a witness on behalf of the claimants, Joseph L. Folsom *et al.*, case No. 321, who, after being duly sworn, deposed as follows:

Questions by Mr. Peachy, att'y for claimant.

1st question. Please state your name, age, and place of residence.

Answer. My name is W. R. Isaacs Mackay; my age, forty years, and I reside in Benicia, in the State of California.

2nd question. Were you acquainted with the late William Alexander Leidsdorff?

Answer. I was; I knew him in the island of Santa Cruz, in the West Indies. I knew him from boyhood. He went from Santa Cruz to Denmark to be educated. I knew him also after his return to Santa Cruz. Shortly after his return there, he was shipped on
37 board of a vessel belonging to the house of Alsop & Chauncy, of New York, as a seaman. I knew him in that capacity for a couple of years, when I lost sight of him, until I heard from his mother that he was trading on the Pacific, and was in Upper California.

3rd question. Were you acquainted with the parents of said Leidsdorff?

Answer. I was, intimately. I knew them for more than twenty consecutive years, during which time I lived on said island. I was born on that island, and was never away except temporarily until 1846.

4th question. What were the names of his parents?

Answer. His father's name was Alexander Leidsdorff, and his mother's, Anna Maria Spark. His father died before I left the island. I was at his funeral. I left the island in 1846, and he died some time before I left. His mother was alive when I left the island. I know she was living in 1852; and my last letters from that place,
38 a few months since, speak of her as still living.

5th question. During the time that you knew William Alexander Leidsdorff was he married?

Answer. He was not.

6th question. Do you know of any issue, legitimate or illegitimate, left by him?

Answer. I know of no issue left by him. He could have left no legitimate issue.

7th question. Were his father and mother married?

Answer. They were not; but for a great number of years they lived together as husband and wife in the same house, and enjoying mutually the same bed and board. They raised a family of five children, consisting of three girls and two boys. These children were baptized in the church in the name of the father, Alexander Leidsdorff, and as the children of him and Anna Maria Spark.

39 8th question. Please state the names of these children.

Answer. William Alexander and Frederick Laurentius were the names of the two boys. The girls were Elize, who died unmarried and without issue, and Mrs. Amonson, whose husband was a pilot in the Danish navy, Mrs. Gendrup, whose husband was an instrument-maker. His name was Holger Gendrup. These children were raised and known *and known* as the children of Alexander Leidsdorff and Anna Maria Spark; and they were brought up as the children of other families at that place. They had the advantage of being educated by their parents in Europe. They were educated in Denmark.

9th question. Was either Alexander Leidsdorff or Anna Maria Spark married to any one, meaning not whether they intermarried, but whether either of them was married to any other person?

Answer. Neither of them were ever married to any other person, but during the whole time that I knew them they lived to-
40 gether as man and wife, and never separated.

10th question. Were the children whom you have mentioned ever legitimated? If so, state when and how.

Answer. They were legitimated, I think, in 1837. I know that a document of their legitimation was recorded, according to law, in the town court of the jurisdiction of Christiansted, in said island of Santa Cruz. I have seen it there myself on record, and it was generally known throughout the island; and it was done in conformity with the laws of Denmark, which directed the manner in which it should be done. By it all the children above mentioned were legitimated. I have heard the father, Alexander Leidsdorff, say that he had legitimated his children. I knew when the document was put on record; it was done in open court, after being read aloud by the crier of the court, which is the legal form in that country.

Questions by Mr. McKune, law agent.

41 1st question. What are your means of knowledge whether said Alexander Leidsdorff and Anna Maria Sparks were or were not husband and wife?

Answer. I was intimately acquainted with them; saw them almost daily for years; have been frequently in their house; and I was, during the greater part of that time, in a public office where quarterly returns had to be made of all marriages which took place, whether by special license or by the intention being declared by a clergyman in church for *three* consecutive Sundays, according to the laws of Denmark.

2nd question. Was it not reputed in the neighborhood that they were married, and were man and wife?

Answer. It was not. Their connection was well known throughout the island. It was very common among the Danish inhabit-
42 ants to live in this way, while the children assumed the name of the father; she always went by the name of Anna Maria Sparks, and never bore his name.

3d question. What is your profession or occupation?

Answer. I am a clerk in the quartermaster's department.

4th question. Have you ever been a lawyer; if nay, how did you become familiar with the laws in the island of Santa Cruz?

Answer. I have never been a lawyer, but my business while residing in the island of Santa Cruz compelled me to have more than a general knowledge of the law, and, in fact, to employ some time in studying it.

5th question. In what place can be found the law described in your answer to the tenth question?

Answer. In any compiled edition of the Danish laws. They are published throughout the Danish dominions, and this is one
43 of the fundamental laws. An edition of the Danish laws has been published in English for the use of the inhabitants of the Danish islands and the convenience of foreigners settling there.

6th question. When and by whom was that law promulgated?

Answer. By the King of Denmark, who, until lately, when a change was made in the constitution, was the source of all the laws.

(Mr. McKune, law agent, objects to all the above deposition which relates to the laws of Denmark.)

W. R. ISAACS MACKAY.

Subscribed and sworn to before me this twenty-first day of June, A. D. 1854.

ALPHEUS FELCH, *Commissioner.*

Filed in office June 21, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 4, p. 615.

GEO. FISHER, *Sec'y.*

44 *Dep. of Jno. A. Sutter.*

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *June* 23, 1854.

This day personally came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, John A. Sutter, a witness on behalf of the United States in lease No. 321, on the docket of said board, wherein Joseph L. Folsom *et al.* are claimants, and said witness being duly sworn, on oath deposed in English as follows, to wit:

The counsel for claimants is present.

Questions by U. S. law agent.

1st question. What is your name, age, and place of residence?

Answer. My name is John A. Sutter; my age, 51 years; my residence, Sutter county, California.

2nd question. In a former deposition in this case you state that, as alcalde of that district, you gave juridical possession of the land
45 in question to Leidsdorff. State now when, where, and under what circumstances you gave such possession, and who was present.

Answer. I cannot remember the time; but Leidsdorff came up to the fort with Capt. Hinckley, and applied to me to give him possession, and I rode to the place with them. I do not recollect of any other person being with us. We went to the ground, and I saw that he had built a house, had stock there, occupied the place, and had cultivated and complied with all that was required of him. Buzzle was living there as Leidsdorff's agent at the time, and gave Leidsdorff possession, as he requested. We rod round the place. Leidsdorff wished to know where his boundaries were, and I rode with him and showed them to him. We did not measure the land at that time. We rode from where the old mill-race commenced, up the American, to the house, and then on up the river towards the hills, perhaps ten or twelve miles; then we went in a direction towards the Cos-
46 umnes river. It was an open plain, and we could see the land, and did not ride far in that direction. That was about all we did; we gave no papers; it was not then required; it was considered sufficient to do it in this way.

Cross-examined by claimants' counsel.

1st question. At the time you gave juridical possession to Leidsdorff, had you with you the original papers, including the grant, diseño, &c.?

Answer. Yes; we had the grant—the grant and diseño with us.

2nd question. State, as nearly as you can, what words you were in the habit of using in giving juridical possession to grantees, of their land, and what steps you usually took in pointing out the lines.

Answer. I had no particular form of words. I would say, I now give you possession of your land, or words to that effect; but the governor was satisfied with my mode of doing the business.

47 In pointing out the lines, I would take the diseño for my guide, and ride to the boundaries and notice them, and tell the party what they were.

3rd question. Do you recollect the size of the rancho in question?

Answer. I believe it was eight leagues.

4th question. Do you recollect the form or shape of the rancho?

Answer. I cannot accurately describe the shape, though I know very well how the land laid. It always bothers me to give the exact lines, points of compass, &c., when I am not on the ground.

5th question. State where the boundary line was between your land and Leidsdorff

Answer. It is a certain oak tree near the mill-dam on the American Fork which was marked as the boundary. The line ran from that in a southerly direction out in the prairie; I cannot say exactly how far.

48 *Re-examined by U. S. law agent.*

1st question. When you gave juridical possession of land, how did you ascertain the boundaries to which you rode!

Answer. We were not very accurate, because there were no surveys till afterwards. We judged of distances by the eye, and, as I before said, I was usually guided by the objects called for in the diseño of the grant.

2nd question. When, by whom, and how was the line running from the oak tree you mentioned established?

Answer. It was established by Captain Vioget, when he run my line in 1840. He surveyed the land, marked the tree, and made a plan of the survey.

J. A. SUTTER.

Subscribed and sworn to before me on this 23d day of June, A. D. 1854.

PETER LOTT,
Commissioner for taking testimony, &c.

Filed in office June 23, 1854.

49 GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 4, p. 649.

GEO. FISHER, *Sec'y.*

Dep. of Cha's V. Gillespie.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *July* 8, 1854.

This day personally came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in

said State, Charles V. Gillespie, a witness on behalf of the claimants in case No. 321, wherein Joseph L. Folsom *et al.* are claimants; and said witness, being duly sworn, on oath deposed in English as follows:

The U. S. associate law agent is present.

Questions by claimants' counsel.

1st question. What is your name, age, and residence?

Answer. My name is Charles V. Gillespie; my age, 44 years;
50 my residence, San Francisco county, California, where I have resided six years last February.

2nd question. Were you acquainted with the late William Alexander Leidsdorff? If yea, how long did you know him; what was the extent of your acquaintance with him; and where did he die?

Answer. I was acquainted him from the day of my arrival here, February 2, 1848. I saw him daily, and was well acquainted with him till he died. He died about the middle of May, 1848, in this city. I was at his funeral; he was buried at the mision Dolores.

3rd question. Who took charge of the effects of his estate after he died?

Answer. William D. M. Howard did; he was appointed administrator by Tounsend, alcalde. I was in Mr. Howard's employment, and he made me his agent to manage the affairs of said estate.

4th question. When did the effects of said estate pass out of
51 the possession of said Howard, and into whose hands did they pass?

Answer. In February, March, or April, 1850, Howard turned over to Capt. J. L. Folsom all the effects, books, papers, property, and business of said estate, of every description.

Cross-examined by U. S. law agent.

1st. question. Why did Howard turn over the estate to Folsom?

Answer. He was ordered to do so by Alcalde Gerry.

2nd question. Why was that order made; what lead to it?

Answer. Capt. Folsom petitioned the alcalde for such order, in behalf of the heirs of Leidsdorff.

3rd question. How much money did Capt. Folsom pay the alcalde to make the order?

Answer. I am not aware that he paid any.

C. V. GILLESPIE.

52 Subscribed and sworn to before me on this 8th day of July, A. D. 1854.

PETER LOTT,
Commissioner for taking testimony, &c.

Filed in office July 8, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 5, p. 63.

GEO. FISHER, *Sec'y.*

Dep. of Jos. P. Thompson.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *July* 10, 1854.

This day personally came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. commissioners in said State, Joseph P. Thompson, a witness on behalf of the claimant in case No. 321, wherein Joseph L. Folsom is claimant; and said witness, being duly sworn, on oath deposed in English as follows, to wit:

The U. S. law agent is present.

Questions by claimants' counsel.

53 1st question. What is your name, age, and place of residence?

Answer. My name is Joseph P. Thompson; my age, 30 years; my residence, San Francisco, California.

2nd question. Were you acquainted with the late William Alexander Leidsdorff? If yea, state when you first knew him, where, and state all your acquaintance with him.

Answer. I was acquainted with him. I first knew him in 1841, in the Sandwitch Islands, in command of the American schooner "Julia Ann;" from there went to the coast of California. I again met him in Monterey, December 31st, 1841. He continued in command of the Julia Ann throughout the years 1842 and 1843, during which time I was on board with him as a clerk on the vessel. At the close of 1843 or early in 1844 he went with said schooner to Mazatlan, where I again met him in February, 1844. In the summer of 1844 I again met him in San Francisco, California, where he remained till the time of his death. I knew him intimately from the
54 close of 1841 till his death, in May, 1848.

3rd question. State when he died; where; whether he left a will or died intestate, and whether he was married and left a widow or any children, and if any, what children.

Answer. He died in San Francisco in May 1848. I left San Francisco a week before he died, and returned a week after his death. I think he died intestate; his death was announced in the Alta California of the 24th of May as having taken place on the 18th of May, 1848, and in communications to Governor Mason, at Monterey, I never heard of his being married, and always understood him to be unmarried, and I never knew of his having any children. I have recently examined the files of the Alta California in the office of that paper, and saw and read the announcement there, and I also read it at the time on my return from Monterey.

JOSEPH P. THOMPSON.

55 Subscribed and sworn to before me on this 10th day of July, A. D. 1854.

PETER LOTT, *Commissioner.*

Filed in office July 10, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 5, p. 85.

GEO. FISHER, *Sec'y.*

Dep. of J. J. Warner.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *July* 8, 1854.

This day personally came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners, in said State, J. J. Warner, a witness on behalf of claimant in case No. 321, wherein Joseph L. Folsom is claimant; and said witness, being duly sworn, on oath deposes as follows:

The U. S. law agent is present.

Questions by claimants' counsel.

1st question. What is your name, age, and residence?

56 Answer. My name is J. J. Warner; my age, 46 years; my residence, San Diego, California.

2nd question. State whether you were acquainted with the late William Alexander Leidsdorff; if yea, when did you first know him, and where?

Answer. I was acquainted with him. I knew him first in the latter part of the summer or early in the fall of 1840, in the city of New York. I met him there a number of times and became pretty well acquainted with him. He was then master of a schooner then fitting out there for California. The name of the schooner was "Julia Ann." I next saw him in the city of Panama in the spring of 1841, on his arrival there in the same schooner, on his way to California. I there embarked as a passenger on his schooner, and arrived in Monterey in June, 1841, with him, from which time I repeatedly saw him at different places in California till as late as July, 1844. I then saw him

57 in the pueblo of Yerba Buena. I do not remember to have seen him since.

3rd question. Do you know what country he was a native of?

Answer. Only from what he told me. He told me he was a Dane, born on one of the West India islands. I think it was the island of Santa Cruz. I know he told me that it was one of the smaller of the West India islands, and a Danish island.

4th question. Was Leidsdorff ever married?

Answer. Not to my knowledge. I always understood from him that he was a single man.

5th question. Did he leave any issue, legitimate or illegitimate, to your knowledge?

Answer. Not any.

6th question. Do you know when he died?

Answer. I do not.

7th question. Where did he reside in California?

Answer. He resided in the pueblo of Yerba Buena, in Alta
58 California, where I understood he died.

J. J. WARNER.

Subscribed and sworn to before me on this 8th day of July, 1854.

PETER LOTT,
Commissioner for taking testimony.

Filed in office July 8, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 5, p. 62.

GEO. FISHER, *Sec'y.*

Dep. of A. D. Patterson.

UNITED STATES LAND COMMISSION,
San Francisco, July 14, 1854.

On this day, before Commissioner Alpheus Felch, came A. D. Patterson, a witness in behalf of the United States in case 321, who, after being duly sworn, deposed as follows:

Questions by Mr. McKune, law agent.

1st question. Please state your name, age, and place of residence.

Answer. My name is A. D. Patterson; my age is forty-seven
59 years, and I reside in Sacramento county, California; my residence is ten miles from Sacramento city, and on the south side of the American river, immediately on the bank of said river.

2nd question. How far is it from your house, east, to the foot-hills of the Sierra Nevada?

Answer. By the way of the road it is eighteen or nineteen miles. It will not vary much from that in a straight line.

3rd question. Is gold found in the soil and in the banks along the said river at that place?

Answer. It is all the way along from my house to the foot-hills. In some places it is worked largely.

(Mr. Peachy, for the claimant, objects to this question and answer.)

A. D. PATTERSON.

Subscribed and sworn to before me this fourteenth day of
60 July, A. D. 1854.

ALPHEUS FELCH, *Commissioner.*

Filed in office July 14, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 5, p. 167.

GEO. FISHER, *Sec'y.*

Dep. of John Bidwell.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *July* 21, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, John Bidwell, a witness on behalf of the claimants, Joseph L. Folsom *et al.* in case No. 321 on the docket of said board; said witness, being sworn, deposed as follows:

The U. S. law agent is present.

Questions by claimants' counsel.

1st question. What is your name, age, and residence?

61 Answer. My name is John Bidwell; my age, 35 years; my residence, Butte county, California.

2nd question. Are you acquainted with the land claimed in this case; if yea, how long have you known it?

Answer. I am acquainted with it; have known it since the year 1841.

3rd question. Do you know of any line constituting Sutter's eastern boundary of that portion of his land of New Helvetia which lies on the south of the American Fork? If yea, state whether there were any landmarks fixing that line, and any direction taken by that line; also state when you first knew of the existence of boundary and landmarks; whether the same was generally known and understood; if yea, how long it was so known.

Answer. I do know of the eastern line of said portion. It was an oak tree standing near the bank of the American river, on the

62 south side of said river, which was pointed out to me as the boundary of Sutter's land in 1841. The line was always understood to run from that tree south, at right angles to the river. That was generally known and understood to be the boundary and landmark, from my first knowledge of it in 1841, and down to 1848 to my certain knowledge; since that I have not been conversant with that locality. The said oak tree was blazed and marked. The blazes were on the south side next to the road. The tree was probably about two feet in diameter. In the year 1845 Capt. Sutter settled Perry McCoon upon the land on his eastern line. I drew the deed for them; and in doing so, described that tree as the eastern boundary of the tract, under Capt. Sutter's instructions.

4th question. How far was that tree, of which you have spoken, distant from Sutter's fort?

Answer. It was about 7 miles east from the fort, a little above the upper end of the mill-race.

63 5th question. How far is it from that tree, on a direct easterly line, to the first hills?

Answer. I should think from ten to twelve miles.

6th question. What is the general direction of the American river from its mouth up to the hills?

Answer. It is east.

Cross-examined by U. S. law agent.

1st question. Give now the full description of the land mentioned in the deed of which you speak of having written to Perry McCoon.

Answer. The land was bounded by Capt. Sutter's eastern line on the east, at the oak tree I before mentioned; I do not remember positively whether the oak tree was mentioned in the deed, but everybody knew and understood that to be the boundary. I cannot now recollect the precise words of description in said deed, nor do I now recollect the precise amount of land granted by said deed.

64 2d question. What do you mean by "everybody," when you say everybody knew and understood that to be the boundary?

Answer. I mean everybody who lived in Sacramento valley at that time—that it was the common understanding.

3d question. From that oak tree what distance did said line run south, and what marks were upon said line?

Answer. I ran south to Capt. Sutter's southern boundary. I do not know the precise distance. I know of no other mark on the line but the oak tree at the beginning point.

4th question. How do you know that is Sutter's eastern line?

Answer. It was pointed out to me as his boundary by a man by the name of John Sinclair, I believe, who was settled in that vicinity, and because it was always recognized as such by the people living in that part of the country.

65 5th question. State the instances of recognition you recollect.

Answer. I have heard Capt. Sutter declare that it was his boundary. I was often called upon to make maps of vacant lands, and had occasion to enquire of the boundaries in such cases.

6th question. About how far south did said line run, and how did you know its extent?

Answer. I would judge it to be from three to six miles. I know the extent of it from my knowledge of the country, and from my having always understood where Sutter's southern boundary was.

7th question. When did you last pass over the land?

Answer. I passed over one corner of it last winter.

8th question. What point do you call the foot-hills of the Sierra Nevada, east from that marked tree?

66 Answer. I should consider the foot-hills to commence at the first deep gulch that comes into the American river, above Sutter's eastern boundary, from 10 to 12 miles therefrom; there is where the land becomes hilly and broken—it is rolling land. I cannot say how high the first hills are.

9th question. In what direction does the American river run at the point where the marked tree stands of which you have spoken?

Answer. I shall judge about west.

Re-examined by claimants' counsel.

1st question. State what you know of the occupation of the land claimed in this case.

Answer. It was occupied by a man by the name of Willard Buzzle early in the spring of 1845. He was employed by Capt. William A. Leids-

dorff for that purpose. He built a good house and corral, and
67 made fields which were cultivated. He put several hundred head of cattle there, as well as a number of horses. He lived there with his family that year and until 1847. The place continued to be occupied in 1848; since that time I have not been acquainted with it.

J. BIDWELL.

Subscribed and sworn to before me on this 21st day of July, A. D. 1854.

PETER LOTT, *Commissioner, &c.*

Filed in office July 21, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 5, p. 181.

GEO. FISHER, *Sec'y.*

Dep. of J. S. Berreyesa.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Aug.* 2, 1854.

Personally appeared this day, before the commissioners for ascertaining and settling the private land claims in the State of California, sitting as a board, José S Berreyesa, a witness on behalf of the
68 claimants, in case No 321 on the docket of said board, for the place named "Rio de los Americanos," who, being duly sworn, deposeth and saith as follows, to wit:

Questions by the claimants' counsel.

1st question. Are you acquainted with the handwriting of Manuel Micheltorena and Francisco Arce? If yea, state the means of your knowledge, also whether or not their signatures attached to the paper now shown you, marked M. G. F., and annexed to the deposition of William Cary Jones, purporting to be letter of naturalization to Guillermo A. Leidsdorff, are the genuine signatures of the said Micheltorena and Arce.

Answer. I am acquainted with the handwriting of Manuel Micheltorena and Francisco Arce, having seen them both frequently write and sign their names. I believe that their signatures attached to the paper now shown me, and described in the foregoing question,
69 are the genuine signatures of the said Manuel Micheltorena and Francisco Arce.

The U. S. law agent, being present, declines interrogating the witness.

JOSÉ BERREYESA.

Subscribed and sworn to before the commissioners, sitting as a board, this 2d August, A. D. 1854.

Attest: GEO. FISHER, *Sec'y.*

Filed in office Aug. 2, 1854.

GEO. FISHE , *Sec'y.*

Recorded in Ev. B, vol. 5, p. 251.

GEO. FISHER, *Sec'y.*

Depo. of W. C. Jones.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Aug't 2d*, 1854.

Personally appeared this day before the commissioners for ascertaining and settling the private land claims in the State of California, sitting as a board, William Carey Jones, a witness on behalf of the claimants, Joseph L. Folsom *et. al.*, in case No. 321 on the
70 docket of the said board, for the place named "Rio de los Americanos," who, being duly sworn, deposeth as follows, to wit:

Questions by the claimants' counsel.

Ques. 1st. Are you acquainted with the handwriting of Manuel Micheltorena and Francisco Arce? If yea, state whether their signatures attached to the paper now shown you, marked M. G. F. and annexed to this deposition, purporting to be a letter of naturalization to Guillermo A. Leidsdorff, are the genuine signatures of the said Micheltorena and Arce.

Answer. I am acquainted with the signature of Micheltorena from having seen his signature written on many private and public documents in public archives, which was my official duty to examine and ascertain the genuineness of, and I know the handwriting of Arce by same means, and also from having frequently seen him write and
71 sign his name; their signature on the paper now shown me are their genuine signatures.

The law agent declines cross-interrogating the witness, but he objects to the above testimony on the ground of the incompetency of the evidence.

WM. C. JONES.

Subscribed and sworn to before the commissioners, sitting as a board, this 2d Aug't, A. D. 1854.

Attest: GEO. FISHER, *Sec'y.*

Filed in office Aug. 2d, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 5, p. 250.

GEO. FISHER, *Sec'y.*

72 *S. D. K, "A."—Espediente.*

Espediente.—Promovido por D. Guillermo A. Leidesdorff en pretencion del terreno conocido con el nombre del Rio de "Los Americanos."

No. 389.

2.—S. D. K.

Sello cuarto, dos reales — Habilitado provisionalmente por la aduana maritima del puerto de Monterey en el departamento de las Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA.
PABLO DE LA GUERRA.

Por ausa del admor.

[SELLO.] GUILLE'O ED'O HARTNELL.

MONTEREY, *Agosto, Gobernado* 29 *de* 1844.—Inf' el S. Srio del despacho tomando previam'te los necesarios.

73 MICHELT'A.

EXMO. SOR. GOBERNADOR: C'o Guillermo A. Leidsdorff, natural de dinnamarca y naturalizado en la republica Mejicana, respecto se presente y dice: Que hallandose poseedor de un gran numero de ganado mayor y deseoso á tener un sitio en propiedad para fomentarlo, he en contrado uno valdio colindante á los terrenos de Señor Sutter segun esplica el adjunto diseño que debidm'te accompaño, dicho sitio es en el Orillo del Rio de los Americanos y consiste de cuatro leguas de largo por el este y dos dos leguas de ancho por el sur. Por tanto, A. V. E. suplica rendidamt'e que me conceda dicho terreno por lo cual recibire merced y gracia pirando no ser de malicias y lo necesario.

Monterey, 29 de Agosto de 1844.

GUILLERMO A. LEIDSDORFF.

3.—S. D. K.

Como dispone el exmo. sor. gobernador sirvase informar el Sor. Sutter sobre el contenido de la precedente instancia.

Monterey, f'ha la misma.

MAN'L JIMENO.

Exmo. Señor Gobernador:

El terreno que se solicita esta valdio como se acredita por el
74 adjunto certificado y tambien demarcado segun aparece en el diseño, y en una situacion tan contigua al parage del Señor Sutter, que entiendo no haber algun incombiniente pa. que V. E. pueda concederle al interesado el terreno pretendido si no tubiere V. E. otra cosa que disponer.

Monterey, O'bre 1o. de 1844.

MAN'L JIMENO.

F'ha id. Concedido.

MICHELT'A.

633

4.—S. D. K. 5.—S. D. K.

MONTEREY, 8 *de Octubre de* 1844.

Vista la peticion con queda principio este esped'te los informes que preceden con todo lo demas que se tubo presente y ver convino de conformidad con las leyes y reglamentos de la materias, declaro á Dn. Guillermo A. Leidsdorff por las presentes dueño en propiedad del terreno que se halla situado á las margenes del rio nombrado de los Americanos, colindante con el terreno concedido á la colonia
75 del Sor. Sutter y con las lomerias del oriente en estencion de ocho sitios de ganado mayor, librese el correspond'te despacho tomese razon en el libro respectivo y dirijase este espediente á la exma. asamblea departamental pa. su aprobacion. El E. S. Dn. Manuel Micheltorenas general de brigada del ejercito Mejicano ayudante gral de la plana mayor del mismo gobernador gral é inspector del departamento de las Californias asi lo mando decreto y firmó de que doy feé.

6.—S. D. K.

Jurisdiccion del Rio Sacramento.

El terreno que solicito en este pedimt'o Don Guillermo A. Leidsdorff situado en el Rio de los Americanos por presente esta des ocupado y es el que esta representado en esa mapa y doy este certificacion, para los fines que convengan.

Nueva Helvetia, Agosto 4 de 1844.

J. A. SUTTER.

(Here follows diseño, marked original, page 76.)

76 7.—S. D. K.

77 8.—S. D. K.

El ciudadano Manuel Micheltorena, gral de brigada, &c.:

Por cuanto D. Guillermo A. Leidsdorff, Mejicano por naturalizacion ha pretendido para su beneficio personal seis sitios de ganado mayor en la Rivera del Rio que llaman de los Americanos colindante con el terreno concedido á la colonia del Señor Sutter y con las lomerias del oriente practicadas previam'te las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos de la materia usando de las facultades que me son conferidas á nombre de la nacion Mejicana he venido en conceder el terreno mencionado sujetandose á la aprobacion de la exma. asamblea departamental y á las condiciones siguientes.

1a. No podra venderlo enagenarlo ni hipotecarlo; imponer censo, vinculo ni otro gravamen y ni aun donarlo.

2o. No impedira el cultivo ú otras aprovechamient's que por d'ho terreno adquieren los Indigenas de ese rumbo.

78 3o. Podra cercarlo sin perjudicar las travecias, caminos y servidumbres, lo disfrutara libre y esclusivam'te destinandolo al uso ō cultivo quemas le acomode; pero dentro de un año fabricará casa y estara habitada.

9.—S. D. K.

4a. El terreno de que se donacion es de la estencion de que y a se hecho mencion. El juez que diere la posecion lo hará medir conforme ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

5a. Si contraviniere á estas condiciones perderá su derecho al terreno y sera denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el presente titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey, á ocho de Octubre de mil ochocientos cuarenta y cuatro.

10.—S. D. K.

Sello primero, ocho pesos.—Habilitado provisionalmente por
79 la aduana maritima del puerto de Monterey en el departamento de las Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA.
PABLO DE LA GUERRA.

Por ausa. del admor.
GUILL'O ED'O HARTNELL.

El ciudadano Manuel Micheltorena, general de brigada del ejercito Mejicano ayudante gral del mismo, gobernador comandante gral é inspector del departamento de Californias.

Por cuanto, D. Guillermo A. Leidsdorff, Mejicano por naturalizacion ha pretendido para su beneficio personal seis sitios de ganado mayor en la Rivera del Rio que llaman de los Americanos colindante con el terreno concedido á la colonia del Sr. Sutter y con las lomas del oriente; practicadas previam'te las diligencias y averiguaciones concernt'es segun lo dispuesto por leyes y reglamentos de la materia usando de las facultades que me son conferidas á nombre de la nacion Mejicana he venido en conceder el terreno mencionado sujetan-
80 dose á la aprobacion de la exma. asamblea departamental y á las condiciones sig'tes.

11.—S. D. K.

1a. No podra venderlo, enagenarlo ni hipotecarlo, imponer censo vinculo ni otro gravamen y ni podrá donarlo.

2a. No impedira el cultivo ú otros aprovechamientos que por d'ho terreno adquieran los indigenas de ese rumbo.

3a. Podrá cercarlo sin perjudicar las travecias caminos y servidumbres; lo disfrutara libremente destinandolo al cultivo que mas le acomode, pero dentro de un año frabricara casa y estara habitada.

4a. El terreno de que se hace donacion es de la estencion de que se ha hecho mencion. El juez que diere la posecion lo hara medir conforme ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

5a. Si contraviniere á estas condiciones perderá su derecho al terreno y sera denunciable por otro.

81 En consecuencia mando que teniendose por sabedero el presente titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á ocho de Octubre de mil ochocientos cuarenta y cuatro.

MAN'L MICHELTORENA.
MAN'L JIMENO,
S'rio del Despacho.

12.—S. D. K.

Queda tomado razon de este despacho en el libro respectivo á fojas 11.

JIMENO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and, as such, now having in my office, and under my charge and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the twelve preceeding and hereunto annexed

82 pages of tracing paper, numbered from one to twelve, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file, and forming part of said archives, in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at [SEAL.] the city of San Francisco, Cal., the 16th day of August, 1852.

SAM'L D. KING,
Survey'r Gen'l, Cal.

Filed in office Sept'r 4th, 1852.

GEO. FISHER, *Sec'y.*

"*B.*"—*Translation of espediente.*

Stamp fourth, two reals.—Provisionally authorized by the maritime custom-house of the port of Monterey, in the dep't of the Californias, for the years 1844 and 1845.

(Signed) MICHELTORENA,
For Pablo de la Guerra.

(Signed) GUILLERMO ED'O HARTNELL.

83 { CUSTOM-HOUSE SEAL. }

To his Excellency the Governor:

MONTEREY, *August* 29, 1844.

Let the secretary of state report, taking previously such information as may be necessary.

(S'g'd) MICHELTORENA.

Citizen Guillermo A. Leidsdorff, a native of Denmark, and naturalized in the Mexican republic, before your excellency, with all submission and respect, presents himself and says: That being owner of a great number of large cattle, and desirous of owning in fee a place for taking care of them, he has found one vacant, bounded by the lands of Señor Sutter, as shown by the annexed map, which he duly transmits.

Said place is on the bank of the American river, and consists of four leagues in length towards the east, and two in breadth towards the south.

Wherefore he earnestly prays your excellency to grant him
84 said land, by which he will receive favor and grace, swearing that he does not act from malice, and whatever else may be necessary.

Monterey, August 29th, 1844.

GUILLERMO A. LEIDSDORFF.

JURISDICTION OF THE SACRAMENTO RIVER.

The land situated on the American river which Don Guillermo A. Leidsdorff asks for in this petition is at present unoccupied, and is that which is represented on this map; and I give this certification for the purposes which may be proper.

New Helvetia, August 4th, 1844.

(Signed) J. A. SUTTER.

To his Excellency the Governor:

The land solicited is vacant, as shown by the annexed certificate, and it appears by the map to be so well marked out and so near to the place of Señor Sutter that I think there is no difficulty
85 to your excellency's granting to the person interested the land petitioned for, if your excellency should not direct otherwise.

Monterey, October 1, 1844.

(Signed) MANUEL JIMENO.

Same date—granted.

(Signed) MICHELTORENA.

MONTEREY, *October 8th*, 1844.

Having seen the petition with which this espediente commences, the reports which precede, with all other things which were represented and were proper to be considered, in conformity with the laws and regulations on the matter, I declare Don Guillermo A. Leidsdorff by these presents owner in fee of the land which is situated on

the banks of the river named "the American," bounded by the land granted to the colony of Señor Sutter, and by the hills on the east, in extent eight square leagues.

Let the corresponding title issue, and direct this espediente to the most excellent departmental assembly for its approval.

85 His excellency Don Manuel Micheltorena, general of brigade of the Mexican army, adjutant general of the staff of the same, governor, commanding general and inspector of the department of the Californias, thus ordered, decreed and signed, to which I certify.

I certify the foregoing to be a true and correct translation from an authenticated *fac simile* copy of the Spanish document on file in the office of the U. S. surveyor general for California, which authenticated copy is on file in this office, in case No. 321, Joseph L. Folsom for the place named "Rio de los Americanos."

GEO. FISHER, *Sec'y.*

Filed in office Sept. 4, 1852.

GEO. FISHER, *Sec'y*

87 *Doc. H. H., No.* 1, *annex'd to dep. of J. A. Sutter.—Original title.*

Sello primero, ocho pesos.—Habilitado provisionalmente por la aduana maritima del puerto de Monterey en el departamento de las Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA.
PABLO DE LA GUERRA.

El ciudadano Manuel Micheltorena, general de brigada del ejercito Mejicana, ayudante general de la plana mayor del mismo, gobernador comand'te general é inspector del departamento de los Californias.

Por cuanto D. Guillermo A. Leidsdorff Mejicana por naturalizacion ha pretendido para su beneficio personal ocho sitios de ganado mayor en la Rivera del Rio que llaman de los Americanos colindante con el terreno concedido á la colonia del So'r Sutter y con la lomeria del oriente; practicadas previam'te las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos de la ma-

88 teria usando de las facultades que me son conferidas á nombre de la nacion Mejicana he venido en concederle el terreno mencionado sujetandose á la aprovacion de la exma. asamblea departamental, y á las condiciones sigt'es.

1o. No podra venderlo, enagenarlo ni hipotecaclo, imponer censo, vinculo fianza ni otro gravamen y ni podra donarlo.

2a. No impedira el cultivo ú otros aprovechamientos que por d'ho terreno adquieran los Indios de ese rumbo.

3a. Podra cercarlo sin perjudicar las travecias, caminos y servidumbre, lo disfrutara libre y esclusivam'te destinando al uso ó cultivo que mas le acomode pero dentro de un año fabricará casa y estará habitada.

4a. El terreno de que se hace donacion es de la estencion de que ya se ha hecho mencion. El juez que diere la posecion lo hará medir

conforme á ordenanza quedando el sobrante que resulte á la nacion p'a los usos convenientes.

89 5a. Si contraviniere á estas condiciones perderá su derecho al terreno y sera de nunciable por otro.

En consecuencia mando q'e teniendose por firme y valedero el pres'te titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á ocho de Octubre de mil ochocientos cuarenta y cuatro.

MAN'L MICHELT'A.
MAN'L JIMENO, *Srio.*

Queda tomada razon de este despacho en el libro á fojas 11.
JIMENO.

Filed in office Dec'r 21st, 1852.
GEO. FISHER, *Sec'y.*

"D."—Translation of title, being doc. H. H. No. 1, *annexed to dep. of J. A. Sutter.*

Stamp first, eight dollars.—Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years eighteen hundred and forty-four and eighteen hundred and forty-five.

90 (Signed) MICHELTORENA.
(Signed) PABLO DE LA GUERRA.

Citizen Manuel Micheltorena, general of brigade of the Mexican army, adjutant general of the staff of the same, governor, commanding general, and inspector of the department of the Californias.

Whereas Don Guillermo A. Leidsdorff, a Mexican by naturalization, has, for his own personal benefit, petitioned for eight square leagues on the bank of the river called that of "Los Americanos," bounded by the land granted to the colony of Mr. Sutter, and by the ranges of hills "lomerias" on the east, the proper measures and examinations being previously made as required by laws and regulations on the matter, using the powers conferred on me, in the name of the Mexican nation I have granted him the aforesaid land, subject to the approval of the most excellent departmental assembly, and to the following conditions:

91 1st. He may not sell, alienate, or mortgage it, subject it to any tax, entail, pledge, or other incumbrance, neither can he give it away.

2nd. He may not hinder the cultivation or other benefits which the Indians of that part of the country may derive from the said land.

3rd. He may enclose it without prejudice to the roads, cross-roads, and servitudes; he may enjoy it freely and exclusively, making such use or culture of it as he may see fit, but within one year he shall build a house and it shall be inhabited.

4th. The land granted is of the extent already mentioned. The magistrate who may give the possession will cause it to be measured

in conformity with the ordinance, leaving the surplus which may result to the nation for its convenient uses.

5th. If he contravene these conditions, he shall lose his right to the land, and it may be denounced by another.

92 In consequence, I order that the present title being held as firm and valid, note be made of it in the proper book, and that it be delivered to the party interested for his security and other purposes.

Given at Monterey on the eighth of October, one thousand eight hundred and forty-four.

(S'g'd) MANUEL MICHELTORENA.
(S'g'd) MANUEL JIMENO, *Secretary.*

Note has been taken of this dispatch in the respective book, on folio 11.

(S'g'd) JIMENO.

I certify the foregoing to be a true and correct translation from the original Spanish document on file in this office in case No. 321, Joseph L. Folsom.

GEO. FISHER, *Sec'y.*

Filed in office Sept. 4, 1852.

GEO. FISHER.

93 *M. G. F.—Annex'd to dep. of Wm. Carey Jones, being the original letter of naturalization.*

Sello quinto. Medio real.

Habilitado provicionalt'e por la aduana maritima del puerto de Monterey en el departamento de las Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA.
PABLO DE LA GUERRA.

[SELLO.] Por aus'a del admor.,
GUILLER'O ED'O HARTNELL.

[SELLO.] El ciudadano Manuel Micheltorena, general de brigada del ejercito Mejicana, ayundante general de la plana mayor del mismo, gobernador, comand'te general, é ynspector del departmento de Californias.

(Registrado á f's 6.)

Guillermo A. Leidsdorff, natural de Dinamarca, cumplida con las condiciones y requisitos que previene la ley para conceder cartas de naturaleza á los estrangeros, acompañando los documentos necesarios, he venido por la presente naturalezar en la republica Mejicana al espresado D. Guillermo A. Leidsdorff en virtud de la

94 facultad que por aquella ley se me confiere.

Monterey, 1° de Junio de 1844.

MAN'L MICHELT'A.

Por ausencia del Sor. Serio,
FRAN'CO ARCE, *Oficial 1ro.*

Filed in office Aug. 2, 1854.

GEO. FISHER, *Sec'r'y.*

Translation of doc. M. G. F.

Seal fifth. Half real.

Provisionally authorized by the maritime custom-house at the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

(Signed) MICHELTORENA.
(Signed) PABLO DE LA GUERRA.
In the absence of the adm'r,
[L. S.] (Signed) GUILL'O ED'O HARTNELL.

Citizen Manuel Micheltorena, general of brigade in the Mexican army, adjutant general of the staff, governor, commandant
[L. S.] general, and inspector of the department of the Californias:

95 Don Guillermo A. Leidsdorff, a native of Denmark, having complied with the conditions and requisites of the law for the granting of letters of naturalization to foreigners, accompanying the necessary documents, I have hereby concluded to naturalize the said Don Guillermo A. Leidsdorff in the Mexican republic, in virtue of the powers conferred upon me by the said law.

Monterey, June 1st, 1844.
(Signed) MAN'L MICHELT'A.
In the absence of the secretary,
(Signed) FRAN'CO ARCE,
First Clerk.

A true and correct translation of its original in case No. 321, Joseph L. Folsom *et als. vs.* The United States, marked M. G. F.
Witness my official signature this 2nd day of August, A. D. 1854.
GEO. FISHER, *Sec'y.*

Filed in office Aug. 2nd, 1852.
GEO. FISHER, *Sec'y.*

96 *Espediente of Jno. A. Sutter, filed by the U. S.*

Espediente promovido por Dn. Juan Augusto Sutter en solicitud de un terreno que se halla á las margenes del Rio Sacramento.—1841.—250.

This espediente was filed by the U. S. law agent. Let it be so noted on the transcript.

97 Sello tercero. Dos reales.

Habilitado provisionalm'te por la aduana maritima del puerto de Monterey en el departamento de las California, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.
JIMENO.
ANTONIO MARIA OSIO.

[SELLO.] *Exmo. Señor Gob'r de este Departm'to:*

Juan Agusto Sutter, natural de la Republica Suiza naturalizado en la Republica Mejicana y actualm'te radicado en este departamento ante la notoria justificacion de V. E. con el respecto devido hace presente. Que desde su ingreso á este pais deseoso de cultivar una parte de los muches terrenos valdios q'l tiene recabo de V. E. su superior aprobacion p'a establecer se en el terreno que hoy ocupa asociado á algunas familias laboriosas que quisecion seguirlo y como con trabajo aciduo promete y á, esperanzas lisongeras á su establecimiento en la particular y ventajas al departamento en lo general atendiendo
98 á q'l á ejemplo de los q'l lo siguen se ban despertando ideas laboriosas en los demas habitantes de este pais sirviendo á la vez p'r el parage de su situacion de una fuerte varzera á las incursiones de las tribus barbaros á las poblaciones y de una escuela de civilizacion y á los indigenas barbaros yo á los reducidos á misiones quienes en la secuela dilatada de años que ban estado reducidos no ban cido mienbros utiles á la útilos á la sociedad comun como hoy tiene el q'l subscribe la satisfaccion de q'l lo sean, devido á sus infatigables tareas, por todos estas razones se ve en la necesidad p'a engrandecer su empresa y establecer doce familias de suplicor á la bondad de V. E. se serva concederle once leguas de terreno en su establecimiento nominado la Nueva Helvetia situado acia el Norte con total arreglo al terreno citado en el diceño que tiene el honor de acompañar á V. E. no incluyendose en las once leguas citados el ter-
98 reno que periodicam'te es inundado de agua en el imbierno; y protestando á V. E. y la Nacion Mejicana q'l seran p'r el frelmente observados las ley es de colonizacion vijentes y todas las que hablan de esta materia.

Por tanto, á V. E. suplico se serva en uso de las faculta des con que imbisten las leyeo, acceder á su solicitud y interponer á la vez su poderoso sello tercero, dos reales; habitltado provisionalmente por la aduana maritima del puerto de Monterey, en el departmento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

JIMENO.
ANTONIO MARIA OSIO.

[SELLO.] Influjo, ante el gob'no supremo de la nacion á fin de Recabar su superior aprobacion con cuya gracia recibire un beneficio el que subscribe y un formento la agricultura de este pais.

Monterey, Junio 15 de 1841.

Ex'mo.

S'R J. A. SUTTER.

Titulo.

Por cuanto Dn. Augusto Sutter natural de la republica de
100 Suiza y naturalizado en la nacion Mejicana ha pretendido conforme á la ley 18 de Agto. des 1824 y al reglamento 21 de Novre. de 1828, para su veneficio personal y el de doce familias once leguos de tierra á los margenes del Rio del Sacramento en los terrenos valdios de la frontera del norte para colonizar los y formentarlos

en los terminos referidos en las disposiciones mencionadas para cuyo fin ha hacreditado suficientemt'e su laboriosidad buena conducta y demes calidades que son requeridas en estas casos teniendo ya anticipados sus crecidos esfuerzos su constante empeño y celo verdaderamente patriotico en favor de nuestras instituciones reduciendo á la cirilidad una porcion de Indios salvajes naturales de a quellas fronteras é informado suficientemente este gobierno de que los terrenos mencionados no pertenecen á la propiedad particular de mingun individuo pueblo ó corporacion y se hallan pr. consigte. en los clasificados en las referidas leyeo y conforme á las facultades que me
son conferidas en nombre de la nacion Mejicana ; he venido en
101 concederle al mencionado Sor. Dn. Augusto Sutter, pr. las prestes. letras para si y sus colonizadores el terreno referido con el nombre de la nueva Helvecia subjetandose á la aprovacion y reprovacion del supreme gob'no y de la E. J. departmental bajo las condiciones sig'tes:

1a. Podran cercarlo sin perjudicar las travesias caminos y servidumbres; principalmente el trafico y navegacion de los rios.

2o. Mantendra á los naturaler indigenos de los de diferentes tribus de aquellos puntos en el goce y libertad de sus poseciones sin molestarlos y sols podra reducir los á la civilizacion p'r los medios de la prudencia y de los relaciones amistosas sin hostilizarlos en manera alguna antes de no obtener las facultades del gobierno.

3o. El terreno de que se le hace donacion es de once sitior de ganado mayor comprendidos en la estencion que demarca el diceño
que corre agregado al espediente, sin incluir las tierras ane-
102 godos por el impulso y las corrientes de los Rios siendo sus linderos por la parte del norte los tres picos y la latitudo 39, 41, 45 norte al este las margenes del Rio de las Plumas, al sur latitud 38, 49, 32 N. al Oeste el Rio Sacramento.

4o. Cuando se le confirme esta propiedad solicitara del firez respectivo las posesion del terreno para que sea medido conforme á Ordenanza quedando el sobrante que resulte á beneficio de la nacion, para los usos que le convengan.

P. T. mando que teniendose este pr. firme y valedero este litulo se tome razon en el libro que corresponde y se dirija el espediente á la E. J. departamental, asi yo J. B. A., G. C. del departamento de las Calif's lo mandó y firmó de que doy feé.

Mont'y, 18 Julio.
$4.—

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such now having in my office
103 and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the six preceeding and hereunto annexed pages of tracing paper, numbered from one to six, inclusive, exhibit a true and

accurate copy of a document entitled "Espedt'e promovido por Dn. Juan Augusto Sutter, en solicitud de un terreno que se halla á las margenes del Rio Sacramento 1841, 250," now on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco this thirty-first day of July, 1854.

JOHN C. HAYS,
U. S. Surveyor General for California.

Filed in office Aug. 1st, 1854, by U. S. law agent.
GEO. FISHER, *Sec'y.*

104 *Translation of espediente filed by U. S. law agent.*

Espediente had by Don Juan Agusto Sutter on application for a tract of land lying on the margin of Sacramento river.

1841.—250.

Stamp third. Two reals.

Provisionally provided by the marine custom-house of the port of Monterey, in the department of California, for the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

HIMENO.
ANTONIO MA. OSIO.

MARINE CUSTOM-HOUSE OF MONTEREY.

Most excellent the governor of this department:

Juan Agusto Sutter, a native of Switzerland, naturalized in Mexican republic, and actually residing in this department, before
105 Y. E., with due respect, represents, that since his arrival at this country, being desirous to cultivate a portion of the vast lands now existing vacant, he obtained from Y. E. your superior approbation to his establishing himself on the tract now occupied by him, in company with a few industrious families, who had willingly come with him; and as an assiduous work, promises flattering hopes to his establishment in particular, and great advantages to the department in general; considering that after the example of those who had so come with him, ideas of industry are being revived on the other inhabitants of this country, his place, from its location, serving at the same time for a strong bar to the incursions of the barbarous tribes into the villages, and for a school of civilization both to the barbarous aboriginals and those converted to mission, who, after a long service of years that they had been converted, had not been useful members to common society, as the undersigned now is satisfied that they are so, owing to his indefatigable tasks.

106 By reason of all this, he is under the necessity, for the purpose of aggrandizing his enterprise, and establishing twelve

families, to pray Y. E. will be pleased to grant him eleven leagues of land for their establishment, called "Nueva Helvetia," situated toward the north, in total conformity with the tract of land mentioned in the sketch, which he has the honor to annex hereto; not including in the said eleven leagues the land which periodically is inundated in the water, hereby declaring to Y. E., and to the Mexican nation, that the existing colonization law, and all other bearing on this matter, shall be faithfully observed by him.

Therefore he prays Y. E. will be pleased, in exercise of the powers invested upon Y. E. by law, to accede to this petition, and to interpose at the same time Y. E.'s powerful influence to the supreme government of the nation, in order to obtain the superior approval, by which favor the undersigned will receive a great benefit, and the agriculture of this country an encouragement.

107 Monterey, June 15th, 1841.

J. A. SUTTER.

Title.

Whereas Don Agusto Sutter, a native of the republic of Switzerland, and naturalized in Mexico, has solicited, in conformity with the land of 18th of August, 1824, and regulation of 21st of November, 1828, for his personal benefit, and that of twelve families, eleven leagues of land on the margin of Sacramento river, on the vacant lands of the northern frontier, for the purpose of colonizing and benefitting them upon the terms mentioned in the said land and regulation, for which purpose he has sufficiently proved his industry, good conduct, and other qualifications required in such cases, having heretofore displayed his increased efforts, his constant earnest desire, and zeal, truly patriotic, on behalf of our institutions, by reducing to civilization a portion of the native savage Indians of those territories; and this government having been sufficiently informed that the
108 above-mentioned lands do not pertain to private property of any individual, village, or corporation, and consequently these are as classified in the said laws, and according to the power conferred upon me, in the name of the Mexican nation, I have granted to him, the said Sor Augusto Sutter, by these presents, for himself and his colonists, the said tract of land by the name of "Nueva Helvetia," to be subject to the approval or disapproval of the supreme government, and of the honorable the departmental junta, under the following conditions:

1st. He may enclose it without prejudice to the passages, roads, and easements, particularly the river trade and navigation.

2nd. He shall support the aboriginals of the several tribes of those places in the enjoyment and liberty of their possession, without molesting them, and he may only reduce them to civilization by prudent means and friendly relations, without committing any hostilities whatsoever before he should have obtained necessary power
109 from the government.

3rd. The tract of land of which donation is hereby made to him contains eleven "sitios de ganado mayor," embraced within the

extent shown in the sketch which is annexed to the expediente, exclusive of the marshy lands from the impulse and currents of the river, the boundaries being on the north side the three peaks (los tres picos,) and latitude 39° 41′ 45″ north; on the east the margin of Feather river; on the south latitude 38° 49′ 32″ N.; and on the west the river Sacramento.

4th. When the ownership thereof is confirmed to him, he shall apply to the proper magistrate for the possession of the land, that the same may be measured according to ordnance, the surplus thereof to remain for the nation for other convenient purposes.

Wherefore I command that this title being held firm and valid, a registry be made in the proper book, and afterwards this expediente be transmitted to the honorable the departmental junta.

110 Thus I, J. B. A., C. G. of the department of California, ordered and signed this, which I attest.

Mont'y, June 18th, page 4 and the reverse.

I, George Fisher, secretary to the board of the U. S. land commission for ascertaining, &c., do hereby certify that the foregoing is a true and correct translation of a fac simile of a Spanish document of the purport as above set forth, and filed in case No. 321 on the docket of said board now in this office.

In testimony whereof I have hereunto signed my name this 3rd day of August, A. D. 1854.

GEO. FISHER, *Sec'y.*

Filed in office Aug. 3, 1854.

GEO. FISHER, *Sec'y.*

111 *No.* 321.—*Bill of objections by U. S. law agent.*

The law agent objects against the introduction of the evidence of proceedings of probate court upon the petition thereon of J. L. Folsom—

1st. Because said alcalde had no jurisdiction of such matters.

2nd. Because the paper offered in evidence is not properly proved, &c.

3rd. Because said proceedings are void for other reasons.

Of the power of attorney from Anna Maria Spark to T. B. King—

1st. Because said Anna had no interest.

2nd. Because it is not properly authenticated.

3rd. Of substitution of T. B. King, because he had no interest and no power of substitution.

4th. Of the deed from Messrs. McAllister and Norton to Folsom—

Because, 1st, they had no power to convey. 2nd, the instru-

112 ment is not a properly authenticated copy.

4th. Copy of the record of proceeding commenced before the district court for the county of Santa Clara, and subsequently removed to the U. S. dist. court for the northern district of California—

Because, 1st, the court had not jurisdiction. 2nd, there was no interest in the defendants for said decree to operate upon.

Filed in office August 2nd, 1854.

GEO. FISHER, *Sec'y.*

"*E.*"—*Copy of conveyance filed with the petition of claimants.*

No. 28.—(German.)

This stamp is hereby authorized as appertaining to the annexed conveyance and transfer from Anna Maria Spark with Cuator L. Heitman, and Anna Christiana Gindruss with husband, H. Gindruss, by which they, for the sum of forty thousand dollars, transfer and make out over unto J. L. Folsom, captain of the United States army, certain rights or properties mentioned in the annexed instrument of writing, executed before me as notary public, in the town and jurisdiction of Christiansted, St. Croix, this 17th day of September, 1849.

[SEAL.] 1849.

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[Rubric.]

We, the undersigned, Anna Maria Spark, with my undersigned curator, Ludoig Heilmann, and Anna Christiana bord Leidsdorff, with the consent and concurrence of my husband, Holger Guinndruss, who likewise subscribes this document, do hereby declare to have conveyed, transferred, and made over, and we do hereby convey, transfer and make over, under the condition hereinafter mentioned, unto Joseph Libby Folsom, captain in the United States army, his heirs, administrators, or assigns, all our right and title to one undivided half of the inheritance and estate left in the province or territory of California by William Alexander Leidsdorff, son of the said Anna Maria Spark and brother of the said Anna Christiana Gindruss, which said William Alexander Leidsdorff, a native of this island, died some time in the year 1848, in San Francisco, California, under the supposition and full belief that the said Anna Maria Spark and Anna Christiana Gindrus are jointly or individually the legal heirs to the one-half of the whole of said estate. And the condition of this conveyance and transfer being that he, the said Joseph Leibby Folsom, or his legal representative, over and above the sums of two thousand five hundred dollars, paid to the said Anna Maria Spark, and the sum of five thousand five hundred dollars paid to the said Anna Christiana Gindruss, the receipt of which money is hereby acknowledged, give his bonds or obligations to the amount of $17,500 (say seventeen thousand five hundred dollars) to the said Anna Maria Spark, and also his bonds or obligations to the amount of $17,500 (say seventeen thousand five hundred dollars) to the said Anna Christiana Gindruss, with good and undoubted sureties, on such manner as has been separately stipulated and agreed upon, now it is hereby declared and acknowledged that as soon as the undersigned, Holger Gindruss, or any such person as may be proved to have been duly appointed by us to that effect, in the place and stead of the said Holger Gindruss, shall have signed, in due and legal form, upon this document, that the bonds for $17,500, in favor of the undersigned, Anna Maria Spark, and the bonds for $17,500, in favor of the undersigned, Anna Christiana Gindruss, with the sureties to the full and entire satisfac-

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115

tion of him, the said Holger Gindruss, or the persons duly appointed to act in his stead, as mentioned, have been delivered to him and are in his possession, that from that time the conveyance and transfer of all the right and interest which we now have, or may have, jointly or individually, as heirs, under the full belief that we have the legal right thus jointly and individually to transfer and convey away one-half of the whole of said estate or inheritance, but without any guar-
116 entee or responsibility on our part in that respect, to one-half of the whole inheritance and estate left in the province or territory of California, unto the said Joseph Libby Folsom, his heirs, administrators, or assigns, is to be considered as finally consumated and gone into effect. And as soon as the said acknowledgment for the receipt of the bonds, with sureties as above mentioned, shall have been written and signed upon this document, as within stated, this present document shall become and serve as a pure and unconditional conveyance and transfer of our right and title, as joint or individual heirs, to one undivided half of the whole inheritance and estate left in California, by the late William Alexander Leidsdorff, as stated and described above.

In testimony whereof, I, the said Anna Maria Spark, not versed in the art of writing, have hereunto fixed the sign of the cross, and I, the said Ludoiz Heitman, as well as the said Anna Christiana Gindruss, and the said Holger Gindruss, have hereunto set our
117 signatures and seals in the Danish island of St. Croix, West Indias, this 17th day of September, in the year of our Lord one thousand eight hundred and forty nine.

(Signed)	ANNA MARIA her × mark. SPARK.	[SEAL.]
(Signed)	L. HEITMAN.	[SEAL.]
(Signed)	ANNA CHRISTIANA GINDRUSS.	[SEAL.]
(Signed)	HOLGER GINDRUSS.	[SEAL.]

Witness to the signatures of Anna Maria Spark, L. Heitman, Anna Christiana Gindruss, and Holger Gindruss.

(Signed) R. A. FINLAY.
(Signed) J. W. HOPE.

At St. Croix, one of the Danish West India islands, on the seventeenth day of September, in the year of our Lord one thousand eight hundred and forty-nine, personally appeared before me, Ole Stampe Fooj, duly authorized judge recorder and notary public, Friby William Lidrichsen, who is prevented by sickness from acting; Anna Maria Spark, with her duly appointed curator, Leudwig Heitman, who exhibited his appointment dated the 9th of March, 1846;
118 likewise appeared before me Anna Christiana Gindruss, with her husband H. Gindruss, to me known as the persons named in the foregoing instrument, and after subscribing their names thereto in presence of me and witnesses, acknowledged the same to be their free act and deed, executed for the purposes therein mentioned.

In testimony whereof, I have hereunto set myhand and affixed my seal of office, date as above.

(Signed) H. Vs. S.

Witness to foregoing act:

(Signed) M. M. KRAUSE.
(Signed) J. W. HATCHELL.

[OFFICIAL SEAL.]

Fees, &c., $11 60c., (eleven dollars sixty cents.)

(Signed) H. Vs. S.

I, Holger Gindruss, the person authorized to accept for the within named Anna Maria Spark and the said Anna Christiana Gindruss, due and proper bonds accompanied with securities from the
119 within named Joseph Libby Folsom, which I should consider satisfactory, (as by the within agreement and in full conformity therewith, I am so authorized to take and accept,) do hereby acknowledge and declare that I have received and accepted from the within named Joseph Libby Folsom, the proper bonds and securities within mentioned, for the sum of seventeen thousand five hundred dollars to the said Anna Christiana Gindruss, and seventeen thousand and five hundred dollars to the said Anna Maria Spark, within mentioned; and upon consideration and by virtue of the authority vested in me, have determined the same to be entirely satisfactorily. And so far forth as the same shall be necessary to show full and ample performance on the part of the said Captain Joseph Leibby Folsom, I do acknowledge and declare that in such respect the said Captain Joseph Libby Folsom has fully and satisfactorily performed the within agreement on his part.

In witness whereof, I have hereunto set my hand and seal
120 this thirteenth day of November, in the year of our Lord one thousand eight hundred and forty-nine.

(Signed) HOLGER GINDRUSS. [SEAL.]

As witnesses:

(Signed) HENRY CHANNEY.
" E. A. SEIWVI HIROSS.
" JAMES P. TIKIOT.
" WM. J. HOPPIN.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this thirteenth day of November, in the year of our Lord one thousand eight hundred and forty-nine, personally came before me Holger Gindruss, and acknowledged that he had executed the within instrument as the act and deed of Anna Maria Spark, Anna Christiana Gindruss, and of said Holger Gindruss, therein described, by virtue of a power of attorney duly executed by the said parties, bearing date the twenty-seventh day of September, in the year one thousand eight hundred and forty-nine; and at the same time
121 appeared James P. Tibiol, of the city of New York, to me known, who, being by me duly sworn, deposed and said that

he knew the individual who made the said acknowledgment to be the same person who executed the said instrument, which is to me satisfactory evidence thereof.

In witness whereof, I have hereto set my hand and seal of the city
[SEAL.] of New York.

(Signed) SAM'L K. BETTS,
U. S. Judge.

[J. R. B.]

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, James W. Medcalf, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that I am well acquainted with the handwriting of Samuel R. Betts, whose name is subscribed to the annexed certificate of acknowledgment and that the signature to the same is in his proper handwriting.

And I do further certify that he was at the time of signing the same judge of the district court of the United States of America
122 for the southern district of New York.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said district court the thirteenth
[SEAL.] day of November, in the year of our Lord one thousand eight hundred and forty-nine, and of the independence of these United States the seventy-fourth.

(Signed) J. W. METCALF, *Cl'k.*

Recorded in the office of the county recorder of San Francisco, in liber 4 of deeds, page 292, February 28th, 1851, at 2 o'c. and 30 min. p. m.

(Signed) JOHN A. McGLYNN, *County Recorder,*
By JAMES O'GRADY, *Deputy.*

Filed in county recorder's office of Sacramento county, December 24th, 1851, at 9 o'c. a. m., and recorded in liber H of deeds, pages 241 to 244, inclusive.

(Signed) J. A. BIRDSELL, *Recorder,*
By DANIEL STEVENS, *Dep. Rec.*

123 Filed in office Sept. 4th, 1852.

GEO. FISHER, *Sec'y.*

Original deed from Anna Maria Spark, by her att'ys, McAllister & Norton, to Joseph L. Folsom.

This indenture, made this thirty-first day of December, A. D. 1852, by and between Anna Maria Spark, of the island of Santa Cruz, in the Danish West Indias, party of the first part, and Joseph L. Folsom, of the city of San Francisco, State of California, party of the second part, witnesseth:

That the party of the first part, in consideration of the sum of five

dollars, to her paid at and before the ensealing and delivery of these presents, the receipt whereof she doth hereby acknowledge, hath granted, bargained, sold, conveyed, and assigned, and doth by these presents grant, bargain, sell, convey, and assign, unto the party of the second part all her right, title, interest, and estate in and to all the effects, real and personal and of every description, wheresoever situated, in the former department of Upper California, and in the
124 State of California, belonging to and constituting the succession, inheritance, and estate left by the deceased William Alexander Leidsdorff, who departed this life in the city of San Francisco, in the month of May, A. D. 1848, the principal part whereof consisted, and now consists, of real estate situate in the city of San Francisco, and in the counties of Sacramento and Santa Clara.

To have and to hold unto him, the said Joseph L. Folsom, his heirs and assigns, forever, to and for his and their sole use, benefit, and behoof, and for none other whatsoever.

And the party of the first part, for herself, her heirs, executors, and administrators, doth covenant with the said party of the second part, his heirs, executors, administrators, and assigns, that the above-described land, hereby conveyed or intended to be conveyed, is free from all incumbrances created by herself, except such as she may have created in favor of said Joseph L. Folsom, and that she will forever warrant and defend the same unto the party of the second part,
125 his heirs and assigns, against the lawful claims and demands of all persons claiming by, through, or under her, or her heirs or assigns, except those claiming under any other deed from her to said Folsom.

In testimony whereof, the party of the first part, by Mathew H. McAllister and Edward Norton, both of the said city of San Francisco, who are thereto duly authorized, (being substituted by a deed duly made and acknowledged by Thomas Butler King, late of the said city, and recorded in the office of the recorder of San Francisco county, in liber two, Powers of Attorney, page 577, to all the powers conferred on the said Thomas Butler King, by the party of the first part, by a deed or letter of attorney, dated the 16th day of May, A. D. 1851, which is recorded in the aforesaid office, in liber one, Powers of Attorney, page 396, to both of which deeds reference is hereby made,) hath hereunto set her hand and affixed her seal on the day and year first herein written.

ANNA MARIA SPARK, [SEAL.]
Pr. M. H. McALLISTER,
Substituted att'y in fact.
ANNA MARIA SPARK, [SEAL.]
126 By EDWARD NORTON,
Her attorney in fact.

Sealed and delivered in presence of—
JOHN HESKETH.

STATE OF CALIFORNIA,
County of San Francisco, ss:

On this thirty-first day of December, A. D. 1852, before me, a notary public in and for said county, personally appeared M. H. McAllister and Edward Norton, known to me to be the persons described in the foregoing instrument, who exhibited to me the power of attorney made by Anna Maria Spark to Thomas Butler King, and the instrument by which they were substituted to the powers of the said Thomas Butler King; and they jointly and severally acknowledged to me that they executed the foregoing instrument as the attorneys in fact of the said Anna Maria Spark, freely and voluntarily, to the uses and for the purposes therein mentioned.

127 Witness my hand and official seal.

[SEAL.] JOHN HESKETH,
Notary Public.

Recorded in the office of the recorder of deeds of San Francisco county, on liber 18 of deeds, page 250, Dec. 31, 1852, at 3 p. m.
THO'S B. RUSSUM,
Co. Recorder,
Pr. CLEMENT, *Deputy.*

Filed in office Feb'y 3rd, 1853.
GEO. FISHER, *Sec'y.*

Deed.—Exhibit A. B. C., referred to in the supplemental petition.

No. 1.—79.

(Vignette) R. No. 36, VII, 32 cents. Reimer (vignette) Schlegel, 1851.

ST. CROIX.—Know all men by these presents that I, Anna Maria Spark, resident of the Island of St. Croix, by and with the consent of counsellor of justice, F. Friederichsen, her curator *curator*, duly appointed by the governor of this island,

128 which consent is evidenced by his signing this instrument with me, do hereby irrevocably nominate, constitute, and appoint Thomas Butler King, of San Francisco, or his legal representatives, my sole and lawful attorney in the territory or province of California for me, and in my name and to my use, to ask, demand, recover, and receive of and from all person or persons whatsoever, all sums of money, books, papers, chattels, lands, tenements, hereditaments, and other property, of whatsoever kind, nature, and denomination, in whatever part of California situate or found belonging and appertaining to me, as heir and legal representative of my son, William Alexander Leidsdorff, who died in California in the year 1848, hereby giving and granting to the said Thomas Butler King all my power in the premises, and to take and use all due means and process in law for obtaining and recovering the said property, or any part thereof, from the present possessors and others, and in my name to make, sign, exe-

129 cute, and deliver acquittances and discharges, and in all matters touching the estate in question, to appear for me before any court and officer of the law, and in my behalf to answer and defend

all suits or actions, references, and proceedings as may be necessary to recover any portion of the said estate, or to secure, protect, or establish my rights as heir and representative of the said decedent, and in my name and to my use to settle, adjust, and compromise any claim touching my part of the property or estate, of whatsoever nature, of the said decedent, and to compound and agree for the same, and to require the statement and settlement of accounts from all persons whatsoever liable, for any cause, to account unto me; also with power for me and in my name to lease and to sell and in any manner to convey and dispose of the aforesaid property, or any part or parcel thereof, and in my name to make, seal, execute, acknowledge, and deliver such deeds or other instruments or conveyances for the same as the laws may require
130 for the valid transfer thereof; and generally to do all other matters and things whatsoever relating to the premises as fully, to intents and purposes, as I myself might or could do if personally present, though the matters should require more special authority than is herein expressed; and also with power to substitute one or more attorney or attorneys under him, and the same to revoke and renew at pleasure: hereby ratifying all that may said attorney, or his substitute or substitutes, shall lawfully do or cause to be done in the premises by virtue hereof. And it is hereby declared and made known that any and every power of attorney heretofore granted by the said Anna Maria Spark, either solely or jointly with others, to any person or persons for the control or management of the estate of the said William Alexander Leidsdorff, and to represent the said Anna Maria Spark therein, is revoked, annulled, and forever made void and of none effect. And it is hereby declared by the said Anna Maria Spark, that the power of at-
131 torney and agency hereby given is coupled with an interest vested in the said Thomas Butler King. And it is further understood and declared by the said Anna Maria Spark, that this power of attorney is given by her and accepted by the said Thomas Butler King upon the conditions and with the express intent and purpose that the same shall be and remain firm and irrevocable.

In testimony whereof, I, the said Anna Maria Spark, not versed in the art of writing, have hereunto affixed the sign of the cross; and I, the said counsellor, Fridericksen, have hereunto set my signature and seal this 16th day of April, A. D. one thousand eight hundred and fifty-one.

her
ANNA MARIA + SPARK. [SEAL.]
mark.

(Signed) FRIDERICKSEN. [SEAL.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Island of St. Croix.

I, David Rogers, do hereby certify that on the day and year above written personally appeared before me Anna Maria Spark,
132 with her curator counsellor, Friderichsen, (this latter producing to me the appointment for him, as such, issued by the governor of this island on the 19th day of January last, and of which copy has been deposited in this office,) resident of this island, and personally

known to me, both of whom did, in my presence, subscribe and affix their signatures and seals, as above stated, to the foregoing instrument of writing, declaring the same to be their act and deed for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 16th day of April, one thousand eight hundred and fifty-one.

(Signed) DAVID ROGERS, [SEAL]
U. S. Consul.

133 B.

To all whom these presents shall come, Thomas Butler King sends greeting:

Whereas Anna Maria Spark, a resident of Saint Croix, by and with the consent of her curator, signified by his signing the same with her, by her letter of attorney, bearing date the 16th day of April, A. D. 1851, and which is recorded in the county recorder's office of San Francisco county, in liber one of Powers of Attorney, at page 396, &c., did constitute me, the said Thomas Butler King, her attorney, for the purpose and with the powers in the said letter of attorney at large contained:

Know ye that I, the said Thomas Butler King, by virtue hereof and of the power of substitution in the said letter of attorney appearing, do substitute and depute Mathew H. McAllister and Edward Norton, each or either of them to be the lawful and sufficient attorney of the said Anna Maria Spark, with all and every power and authority of acting in the name, stead, and to the use of the said Anna Maria Spark, granted to me by the said letter of attorney, which
134 I can lawfully exercise and delegate; hereby ratifying and confirming whatsoever the said Mathew H. McAllister and Edward Norton, or either them, shall lawfully do in the name of the said Anna Maria Spark, or in my name, as attorney to the said Anna Maria Spark, to the use of the said Anna Maria Spark, by virtue of these presents and the power of substitution in said letter of attorney contained.

In witness whereof I have hereunto set my hand and seal this fifteenth day of December, A. D. 1852.

(Signed) T. BUTLER KING. [SEAL.]

In presence of
(Signed) CYRIL V. GREY.

STATE OF CALIFORNIA,
County of San Francisco, ss:

On this 30th day of December, A. D. 1852, personally appeared before me, Geo. R. Davidson, a notary public for the county of San Francisco, Cyril V. Gray, to me personally known to be the
135 person whose name is subscribed to the foregoing power of attorney as a witness thereto, who, being by me duly sworn, did depose and say that he saw the said power of attorney, executed by T. Butler King; that said T. Butler King, whose name is subscribed

to said power of attorney as a party thereto, is the person who executed the same; and that he, the said Cyril V. Grey, subscribed his name to said power of attorney as a witness thereto at time of the execution thereof by the said T. Butler King.

In testimony whereof, I have hereunto set my hand and seal this 30th December, 1852.

(Signed) GEO. R. DAVIDSON,
[SEAL.] *Not. Pub.*

C.

This indenture, made this thirty-first day of December, A. D. 1852, by and between Anna Maria Spark, of the island of Santa Cruz, in the Danish West Indias, party of the first part, and Joseph L. Folsom, of the city of San Francisco, State of California, party
136 of the second part, witnesseth: That the party of the first part, in consideration of the sum of five dollars, to her paid at and before the ensealing and delivery of these presents, the receipt whereof she doth hereby acknowledge, hath granted, bargained, sold, conveyed, and assigned, and doth by these presents grant, bargain, sell, convey, and assign, unto the party of the second part, all her right, title, interest, and estate in and to all the effects, real and personal, and of every description, wheresoever situated, and in the State of California, belonging to and constituting the succession, inheritance, and estate left by the deceased William Alexander Leidsdorff, who departed this life in the city of San Francisco, in the month of May, A. D. 1848, the principal part whereof consisted and now consists of real estate, situate in the city of San Francisco, and in the counties of Sacramento and Santa Clara. To have and to hold unto him, the said Joseph L. Folsom, his heirs and assigns forever, to and for his
137 and their sole use, benefit, and behoof, and for none other whatsoever.

And the party of the first part, for herself, her heirs, executors, and administrators, doth covenant with the said party of the second part, his heirs, executors, administrators, and assigns, that the above-described land, hereby conveyed or intended to be conveyed, is free of all incumbrances created by herself, except such as she may have created in favor of said Joseph L. Folsom, and that she will forever warrant and defend the same unto the party of the second part, his heirs and assigns, against the lawful claims and demands of all persons claiming by, through, or under her, or her heirs or assigns, except those claiming under any other deed from her to said Folsom.

In testimony whereof, the party of the first part, by M. H. McAllister and Edward Norton, both of the said city of San Francisco, who are thereto duly authorized, (being substituted,) by a deed duly made and acknowledged by Thomas Butler King, late of the said
138 city, and recorded the ——— in the office of the recorder of Sacramento county, to all the powers conferred on the said Thomas Butler King by the party of the first part by a deed or letter of attorney dated the 16th day of May, A. D. 1851, which is recorded in the

aforesaid office in ———, to both of which deeds reference is hereby made,) hath hereunto set her hand and affixed her seal on the day and year first herein written.

(S'g'd) ANNA MARIA SPARK, [SEAL.]
Pr. M. H. McALLISTER, *Att'y.*

(S'g'd) ANNA MARIA SPARK, [SEAL.]
By EDWARD NORTON,
Her att'y in fact.

Sealed and delivered in presence of—
(Signed) JOHN HESKETH.

STATE OF CALIFORNIA,
County of San Francisco, ss:

On this 31st day of December, A. D. 1852, before me, a notary public in and for said county, personally appeared M. H. Mc-
139 Allister and Edward Norton, known to me to be the persons described in the foregoing instrument, who exhibited to me the power of attorney made by Anna Maria Spark to Thomas Butler King, and the instrument by which they were substituted to the powers of the said Thomas Butler King, and they jointly and severally acknowledged to me that they executed the foregoing instrument as the attorneys in fact of the said Anna Maria Spark, freely and voluntarily, to the uses and for the purposes therein mentioned.

Witness my hand and official seal.

(Signed) JOHN HASKETH,
[SEAL.] *Notary Public.*

Filed in office Feb'ry 3, 1853.

GEO. FISHER, *Sec'y.*

140 *Certified copy of power of att'y from T. Butler King to McAllister and Norton.*

To all to whom these presents shall come, Thomas Butler King sends greeting: Whereas Anna Maria Spark, a resident of the island of St. Croix, by and with the consent of her curator, signified by his signing the same with her, by her letter of attorney bearing date the 16th day of April, A. D. 1851, and which is recorded in the county recorder's office of San Francisco county, in liber one of Powers of Attorney, at page 396, &c., did constitute me, the said Thomas Butler King, her attorney, for the purposes and with the powers in the same letter of attorney at large contained:

Know ye that I, the said Thomas Butler King, by virtue hereof, and of the power of substitution in the said letter of attorney appearing, do substitute and depute Mathew H. McAllister and Edward Norton, and each or either of them, to be the lawful and sufficient attorney of the said Anna Maria Spark, with all and every power and authority of acting in the name, stead, and to the use of the said Anna

141 Maria Sparks, granted to me by the said letter of attorney, which I can lawfully exercise and delegate, hereby ratifying and confirming whatsoever the said Mathew H. McAllister and Edward Norton, or either of them, shall lawfully do in the name of the said Anna Maria Sparks, or in my name as attorney to the said Anna Maria Sparks, to the use of the said Anna Maria Sparks, by virtue of these presents, and the power of substitution in said letter of attorney contained.

In witness whereof, I have hereunto set my hand and seal [SEAL.] this fifteenth day of December, A. D. 1852.

T. BUTLER KING.

In presence of—
CYRIL V. GREY.

STATE OF CALIFORNIA,
County of San Francisco, ss:

On this the 30th day of December, A. D. 1852, personally appeared before me, Geo. R. Davidson, a notary public for the county of San Francisco, Cyril V. Grey, to me personally known to be the 142 person whose name is subscribed to the foregoing power of attorney as a witness thereto, who, being by me duly sworn, did depose and say that he saw the said power of attorney executed by T. Butler King; that said T. Butler King, whose name is subscribed to said power of attorney as a party thereto, is the person who executed the same, and that he, the said Cyril V. Grey, subscribed his name to said power of attorney as a witness thereto, at the time of the execution thereof by the said T. Butler King.

In testimony thereof, I have hereunto set my hand and seal [SEAL.] this 30th December, 1852.

GEO. R. DAVIDSON,
Not. Public.

A true copy of the original. Recorded Dec'r 30th, 1852, at 11¼ o'c., at the request of E. Norton.

THOS. B. RUSSUM.

COUNTY OF SAN FRANCISCO,
County Recorder's Office.

143 I hereby certify that the foregoing is a full, true, and correct copy of record deposited, and remaining in this office, as will appear by reference to liber 2 of Powers of Attorney, page 511.

Witness my hand and official seal this 26th day of June, [SEAL.] A. D. 1854.

JAMES GRANT,
County Recorder.

Filed in office June 27, 1854.

GEO. FISHER, *Sec'y.*

Certified copy of power of att'y from Anna Maria Spark to T. Butler King.

No. 1. 79.
St. Croix.
[CROWN.]
R. No. VII. 36, 32 cents.
1851.
[SHIELD.]

REIMER SCHLEGEL.

Know all men by these presents that I, Anna Maria Spark, resident of the island of St. Croix, by and with the consent of coun-
144 sellor of justice, F. Frideruhsen, her curator, duly appointed by the governor of this island, which consent is evidenced by his signing this instrument with me, do hereby irrevocably nominate, constitute, and appoint Thomas Butler King, of San Francisco, or his legal representative, my sole and lawful attorney in the territory or province of California, for me and in my name and to my use, to ask, demand, recover, and receive of and from all person or persons whatsoever, all sums of money, books, papers, chattels, lands, tenements, and other property, of whatsoever kind, nature, and denomination, in whatever part of California situate or found, belonging and appertaining to me, as heir and legal representative of my son, William Alexander Leidsdorff, who died in California in the year 1848, hereby giving and granting to the said Thomas Butler King all my power in the premises, and to take and use all due means and process in law for obtaining and recovering the said property, or any part thereof,
145 from the present possessors and others, and in my name to make, sign, execute, and deliver acquittances and discharges, and in all matters touching the estate in question to appear for me before any court and officer of the law, and in my behalf to answer and defend all suits or actions, and in my name to institute such suits, actions, references, and proceedings as may be necessary to recover any portion of the said estate or to secure, protect, or establish my rights as heir and representative of the said decedent, and in my name and to my use to settle, adjust, and compromise any claim touching any part of the property or estate, of whatsoever nature, of the said decedent, and to compound and agree for the same, and to require the statement and settlement of accounts from all persons whatsoever liable for any cause to account unto me. Also with power for me and in my name to lease and to sell and in any manner to convey and dispose of the aforesaid property, or any part or parcel thereof, and in my name to make, seal, execute, acknowledge, and deliver such
146 deeds or other instruments or conveyances for the same as the laws may require for the valid transfer thereof, and generally to do all other matters and things whatsoever relating to the premises as fully, to all intents and purposes, as I myself might or could do if personally present, though the matters should require more special authority than as herein expressed, and also with power to substitute one or more attorney or attorneys under him, and the same to revoke

and renew at pleasure, hereby ratifying all that my said attorney or his substitute or substitutes shall lawfully do or cause to be done in the premises by virtue hereof. And it is hereby declared and made known that any and every power of attorney or authority heretofore granted by the said Anna Maria Spark, either solely or jointly with others, to any person or persons, for the control or management of the estate of the said William Alexander Leidsdorff, and to represent the said Anna Maria Sparks therein, is revoked, annulled, and
147 forever made void and of more effect.

And it is hereby declared by the said Anna Maria Spark that the power of attorney and agency hereby given is coupled with an interest vested in the said Thomas Butler King. And it is further understood and declared by the said Anna Maria Spark that this power of attorney is given by her and accepted by the said Thomas Butler King upon the condition and with the express intent and purpose that the name shall be and remain firm and irrevocable.

In testimony whereof, I, the said Anna Maria Spark, not versed in the art of writing, have hereunto fixed the sign of the cross, and I, the said counsellor, Friderichsen, have hereunto set my signature and seal, this, 16th day of April, A. D. one thousand eight hundred and fifty-one.

her
ANNA MARIA + SPARK. [SEAL.]
cross.
FRIDERICHSEN. [SEAL]

CONSULATE OF THE UNITED STATES OF AMERICA,
Island of St. Croix.

148 I, David Rogers, consul, do hereby certify that on the day and year above written personally appeared before me Anna Maria Spark, with her curator counsellor, Friderichsen, (this latter producing to me the appointment for him as such, issued by the governor of this island on the 19th day of January last, and of which a copy has been deposited in this office,) residents of this island, and personally known to me, both of whom did in my presence subscribe and affix their signatures and seals, as above stated, to the aforegoing instrument of writing, declaring the same to be their act and deed, for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 16th day of April, A. D. one thousand eight hundred and fifty-one.

DAVID ROGERS, [SEAL.]
U. S. Consul.

149 The preceding is a true copy of an original recorded at request of T. B. King, the 26th day of June, A. D. 1851, at 20 m. to 1 o'c. p. m.

JOHN A. McGLYNN,
County Recorder.

COUNTY OF SAN FRANCISCO,
County Recorder's Office.

I hereby certify that the foregoing is a full, true, and correct copy of record deposited and remaining in this office, as will appear by reference to liber 1 of Powers of Attorney.

Witness my hand and official seal this 26th day of June, A. D. 1854.

[SEAL.] JAMES GRANT,
County Recorder.

Filed in office June 27th, 1854.

GEO. FISHER, *Sec'y.*

150 *Certified copy of "deed" from Anna Maria Spark, by her att'ys, McAllister & Norton, to Jos. L. Folsom.*

This indenture, made this thirty-first day of December, A. D. 1852, by and between Anna Maria Sparks, of the island of Santa Cruz, in the Danish West Indias, party of the first part, and Joseph L. Folsom of the city of San Francisco, State of California, party of the second part, witnesseth: That the party of the first part, in consideration of the sum of five dollars, to her paid at and before the ensealing and delivery of these presents, the receipt whereof she doth hereby acknowledge, hath granted, bargained, sold, conveyed, and assigned, and doth by these presents grant, bargain, sell, convey, and assign, unto the party of the second part all her right, title, interest, and estate in and to all the effects, real and personal, and of every description, wheresoever situated in the former department of Upper California and in the State of California, to and constituting the succession, inheritance, and estate left by the deceased William Alexander Leidsdorff, who departed this life in the city of San Francisco, in
151 the month of May, A. D. 1848, the principal part whereof consisted, and now consists, of real estate situate in the city of San Francisco and in the counties of Sacramento and Santa Clara.

To have and to hold unto him, the said Joseph L. Folsom, his heirs and assigns forever, to and for his and their sole use, benefit, and behoof, and for none other whatever.

And the party of the first part, for herself, her heirs, executors, and administrators, doth covenant with the said party of the second part, his heirs, executors, administrators, and assigns, that the above-described land hereby conveyed or intended to be conveyed is free from all incumbrances created by herself, except such as she may have created in favor of said Joseph L. Folsom, and that she will forever warrant and defend the same unto the party of the second part, his heirs and assigns, against the lawful claims and demands of all persons claiming by, through, or under her, or her heirs or assigns, except those claiming under any other deed from her to said Folsom.

152 In testimony whereof, the party of the first part, by Mathew

H. McAllister and Edward Norton, both of the said city of San Francisco, who are thereto duly authorized, (being substituted, by a deed duly made and acknowledged by Thomas Butler King, late of the said city, and recorded in the office of the recorder of San Francisco county, in liber two, Powers of Attorney, page 577, to all the powers conferred upon the said Thomas Butler King by the party of the first part, by a deed or letter of attorney dated the 16th day of May, A. D. 1851, which is recorded in the aforesaid office in liber one, Powers of Attorney, page 396, to both of which deeds reference is hereby made,) hath hereunto set her hand and affixed her seal on the day and year first herein written.

ANNA MARIA SPARK, [SEAL.]
Pr. M. H. McALLISTER,
Substitution attorney in fact.
ANNA MARIA SPARK, [SEAL.]
By EDWARD NORTON,
Her attorney in fact.

Sealed and delivered in presence of—
JOHN HESKETH.

153 STATE OF CALIFORNIA,
County of San Francisco, ss:

On this thirty-first day of December, A. D. 1852, before me, a notary public in and for said county, personally appeared M. H. McAllister and Edward Norton, known to me to be the persons described in the foregoing instrument, who exhibited to me the power of attorney made by Anna Maria Spark to Thomas Butler King, and the instrument by which they were substituted to the powers of the said Thomas Butler King, and they jointly and severally acknowledged to me that they executed the foregoing instrument, as the attorneys in fact of the said Anna Maria Spark, freely and voluntarily, to the uses and for the purposes therein mentioned.

Witness my hand and official seal.
[SEAL.]
JOHN HISKETH,
Notary Public.

A true copy of the original, recorded December 31st, 1852, at 3 p. m., at request of Peachy and Billings.

THOS. B. RUSSUM,
154 *Co. Recorder,*
Pr. JOHN A. CLARK, *Deputy.*

COUNTY OF SAN FRANCISCO,
County Recorder's Office.

I hereby certify that the foregoing is a full, true, and correct copy of record, deposited and remaining in this office, as will appear by reference to liber 18 of Deeds, page 250.

Witness my hand and official seal this 26th day of June, A. D. 1854.
[SEAL.]
JAMES GRANT,
County Recorder.

Filed in office June 27th, 1854.

GEO. FISHER, *Sec.*

Proceedings in the probate court.

In the probate court Jan'y 20, 1850.—Hon. Jno. W. Geary, judge.

And now, on this twentieth day of January, A. D. 1850, personally appeared in court Joseph Libby Folsom, who presented
155 the following petition, which is herein recorded in words, as follows:

STATE OF CALIFORNIA,
Dist. of San Francisco, ss:

Court of probate—Hon. Jno. W. Geary, judge.

In the matter of the estate of William A. Leidsdorff, deceased.

Joseph Libby Folsom represents unto this honorable court that he is the attorney in fact of Anna Maria Sparks, of St. Croix, the mother and sole surviving parent of Wm. A. Leidsdorff, who died in San Francisco in the year 1848 intestate, having been never married, and leaving no issue or descendants of any kind; that he is empowered by the said Anna Maria Spark, whose letter of attorney to him, said Folsom, is recorded in the Leidsdorff book of successions, pages 104, 105, and 106, to take the sole and entire management and possession of all the effects, of whatever sort, belonging to the said successors, with power of substitution and revocation; that, exercising the said power of substitution, he appointed Theodore Shillabar, esq'r,
156 his substitute during his, the said Folsom's, absence from California, which power has expired by limitation. The said Folsom therefore prays, that upon the final hearing of this his petition, the court will order and decree that he, the said Folsom, be put into possession of all the effects belonging to the estate of the late Wm. A. Leidsdorff, and this court will make all such further orders and decrees as may be necessary therefor.

JOS. L. FOLSOM.

The court therefore orders, that Wm. D. M. Howard, administrator of the late Wm. A. Leidsdorff; George Hyde, attorney for the said administrator; Edmund Randolph, esq., attorney for the absent heirs, be summoned to appear before this court on the ninth day of February, 1850, to show cause, if any they can, why the foregoing petition of the said J. L. Folsom should not be granted.

JNO. W. GEARY,
Probate Judge.

Attest:

H. L. DODGE, *Clerk.*

157 Probate court, Feb'y 9, 1850.—Hon. Jno. W. Geary, judge.

In the matter of the estate of W. A. Leidsdorff, deceased.

Court met to consider the aforesaid petition of J. L. Folsom. Present: Wm. D. M. Howard, administrator; Geo. Hyde, esq'r, att'y for the administrator; Alexander Campbell, esq'r, att'y for the absent

heirs, representing Edmund Randolph, esq'r; Capt. J. L. Folsom, and Messrs. Halleck, Peachy, and Billings, att'ys for Capt. Folsom.

The power of attorney given Capt. Folsom by Anna Maria Spark, also the depositions of various persons relating to the identity of the said Wm. A. Leidsdorff, and the said Anna Maria Spark, as the mother of said Leidsdorff, were submitted to the court, no evidence having been introduced on the part of the administrator or the absent heirs why the prayer of the petitioner aforesaid should not be granted. The court adjourned to render a final order on the 12th inst.

Probate court, Feb'y 12, 1850.—Hon. Jno. W. Geary, judge.

158 In the matter of the estate of Wm. A. Leidsdorff, dec'd.

Pursuant to adjournment, the court met at the office of Messrs. Halleck, Peachy, and Billings on the 12th Feb'y, 1850. Present: W. D. M. Howard, esq'r, adm'r; C. V. Gillespie, esq'r, ag't of adm'r; Alex'r Campbell, esq'r, att'y for absent heirs; Capt. J. L. Folsom, peti'r for administrator, p. H., P., and Billings, att'ys for Capt. Folsom. The administrator presented his account current with the aforesaid estate; also vouchers for sundry bills, which were audited and allowed by the court to pass to the credit of the administrator, for which see page 70. An order of court was then given in the following words, viz:

In the matter of the estate of William A. Leidsdorff, deceased.

STATE OF CALIFORNIA,
District of San Francisco:

Court of probate.—Hon. John W. Geary, judge.

And now, this twelfth day of February, A. D. one thousand eight hundred and fifty, personally appeared in court William D. M. Howard, esq'r, administrator of the estate of said William A.
159 Leidsdorff, dec'd; George Hyde, esq'r, attorney for the administrator; Alexander Campbell, esq., attorney for the absent heirs, representing Edmund Randolph, esq'r; and Joseph L. Folsom, by his attorney, Halleck, Peachy, and Billings.

The court then called up the matter of the petition of Joseph Libby Folsom, esq'r, on record in the Leidsdorff book of successions, page 138. The power of attorney given by Anna Maria Spark to the said Folsom, which is of record in the aforesaid book of successions, on pages 104, 105, and 106, was read, and also the depositions of various witnesses, duly taken and certified, proving the identity of the late William A. Leidesdorff, the intestate, and also that of Anna Maria Spark, mother of the said Wm. A. Leidsdorff; and it having been proven to the satisfaction of the court that the said W. A. Leidsdorff died intestate, having never been married, and having left no issue or descendants of any kind, and that the said Anna Maria Spark, of the island of St. Croix, one of the Danish West Indias islands,

160 the constituent, is truly the mother and sole surviving parent of the said Wm. A. Leidsdorff, and as such entitled to succeed to all the effects of which he died possessed, and which now or hereafter belong to the succession, and that the said Joseph L. Folsom, by virtue of the power of attorney aforesaid, is fully authorized and empowered to take the sole and entire control and management of the effects of every description whatsoever belonging to the said succession.

Therefore it is ordered, adjudged, and decreed by this court that the said William D. M. Howard, administrator as aforesaid, do immediately surrender, assign, convey, and turn over to the said Jos. L. Folsom all of the land, tenements, hereditaments, goods, chattels, rights, credits, books, papers, and effects of every description whatsoever, nothing excepted, belonging to the estate of the said William A. Leidsdorff, deceased, which have come into the possession of the said Wm. D. M. Howard, administrator as aforesaid, and that
161 the said Joseph L. Folsom do give unto the said administrator a receipt and acknowledgment of all the property and effects which may thus come into his possession.

And it is further ordered that certified copies of this order be furnished to the said William D. M. Howard, administrator as aforesaid, and to the said Joseph L. Folsom, and that a certified copy of the same be forwarded to the said Anna Maria Spark, and that the same, or an abstract thereof, be published in the public prints of San Francisco.

In testimony whereof, I have hereunto set my hand and official seal this twelfth day of February, A D. eighteen hundred and fifty.

[L. S.] JNO. W. GEARY, *Probate Judge.*

Attest:

H. L. DODGE *Probate Clerk.*

The above is a true copy of the original order, recorded Feb'y 12, 1850. H. L. DODGE, *Probate Clerk.*

162 STATE OF CALIFORNIA,
County of San Francisco, ss:

I, Thomas Hayes, clerk of the county of San Francisco, do certify the foregoing to be a true copy of a record now remaining in this office, and will more fully appear by reference to pages 138, 139, 140, 141, and 142 of record of the Leidsdorff estate.

Witness my hand and the seal of the probate court affixed this 26th day of June, A. D. 1854.

THOMAS HAYES, *Clerk,*
By DAVIS, *Dep. Clerk.*

Filed in office June 27, 1854.

GEO. FISHER, *Sec'y.*

Certified copy of "deed," by McAllister & Norton, com'rs of the U. S. dist. court to execute conveyance under the decree to Jos L. Folsom.

Whereas, by a decree rendered on the 31st day of December, A. D. 1852, in the United States district court for the northern district of

the State of California, in the exercise of its circuit court jurisdiction,
in a cause wherein Joseph L. Folsom, of the city of San Fran-
163 cisco, in the said State, is plaintiff, and Anna Maria Spark, and
Anna Christiana Gindruss, of the island of Santa Cruz, in the Danish West Indias, and Frederika Cordelia Leidsdorff, of the island of St. Thomas, in the Danish West Indias, are defendants, it was ordered, adjudged, and decreed by the said court that the said Joseph L. Folsom is entitled to a specific performance by Anna Maria Spark, one of said defendants, of the contract set forth in said complaint as therein prayed for: And whereas the said court further ordered, adjudged, and decreed that the said Anna Maria Spark shall convey, as afterwards provided in said decree, to the said Joseph L. Folsom, all her right, title, interest, and estate in and to all the effects, real and personal, in the State of California, belonging to the succession of the late William Alexander Leidsdorff, at the time of his death, to which, by virtue of her right of heirship, she is entitled in the manner in which she covenanted and agreed so to do by the contract set forth in the complaint:

164 And whereas it was further ordered, adjudged, and decreed that the said conveyance should be made by deed, duly executed and acknowledged, according to the laws of this State, in the manner and form proper to effectuate in law such conveyance of the right, title, interest, and estate of the said Anna Maria Spark, and that the said deed shall be made, executed, and acknowledged when the said Joseph L. Folsom shall have complied with his part of the contract set forth in said complaint by the payment of the sums of money secured by the bonds as therein specified, to the parties to whom said sums of money are due and payable, with interest on the respective principal sums named in said bonds, at the rate therein stipulated, until the maturity of each, or when the said Folsom shall have made it appear to the satisfaction of the commissioners, afterwards to be appointed by said decree, that the sums of money and interest are deposited in the city of New York, subject to the order of the persons to whom
165 they are respectively payable.

And whereas, by the said decree, Mathew Hall McAllister and Edward Norton, of the said city of San Francisco, were appointed by the said court its joint commissioners to make, execute, deliver, and acknowledge, in the manner above decreed, and instrument of conveyance, whereby they shall convey to the said Joseph L. Folsom all the right, title, interest, and estate of the said Anna Maria Spark in and to the effects, both real and personal, or of whatsoever description and wheresoever situated in the State of California, together with all rights and credits belonging to and constituting the succession of the said William Alexander Leidsdorff at the time of his death, and that such conveyance shall be made by said commissioners when the said Joseph L. Folsom shall have paid the sums of money secured by the aforesaid bonds, with interest as above decreed, or shall have made it appear to the satisfaction of the said commissioners that the said
166 sums of money and interest are deposited in the city of New York, subject to the order of the parties to whom they are re-

spectively due or to become due: And whereas the said Joseph L. Folsom has made it appear to the satisfaction of us, the said Mathew Hall McAllister and Edward Norton, that the said sums of money and interest are deposited in the city of New York, payable to the order of the persons to whom the same are respectively due:

Now, therefore, this indenture witnesseth: That we, the said Mathew Hall McAllister and Edward Norton, by virtue of the power conferred on us by the said decree, and acting under said authority and decree, have granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said Joseph L. Folsom, all the right, title, interest, and estate of the said Anna Maria Spark, in and to the effects, both real and personal, or of whatsoever description and wheresoever the same be situated and in the State of California, together with all the rights and credits belonging to
167 and constituting the succession of the said William Alexander Leidsdorff at the time of his death.

To have and to hold unto the said Joseph L. Folson, his heirs, and assigns, to his and their sole use, benefit, and behalf.

In witness whereof, we, the said Mathew Hall McAllister and Edward Norton, have hereto set our respective hands and seals, this, the thirty-first (31st) day of December, in the year of our Lord one thousand eight hundred and fifty-two.

M. H. McALLISTER, [SEAL.]
Commissioner.
EDWARD NORTON, [SEAL.]
Commissioner.

Sealed and delivered in the presence of—
JOHN HASKETH.

STATE OF CALIFORNIA,
County of San Francisco, ss:

On this thirty-first day of December, A. D. 1852, before me, a notary public in and for said county, personally appeared Mathew Hall McAllister and Edward Norton, well known to me to be the
168 persons described in and who executed the foregoing conveyance, who acknowledged to me that they executed the same as commissioners appointed by the court in the decree in said conveyance, recited freely and voluntarily to the uses and for the purposes therein mentioned.

Witness my hand and official seal.

[SEAL.]
JOHN HESKETH,
Notary Public.

A true copy of the original, recorded December 31st, 1852, 3 p. m., at request of Peachy and Billings.

THOS. R. RUSSUM,
County Recorder,
Pr. JOHN A. CLARK,
Deputy.

COUNTY OF SAN FRANCISCO,
County Recorder's Office.

I hereby certify that the foregoing is a full, true, and correct copy of record deposited and remaining in this office, as will appear by reference to liber 18 of Deeds, page 251.

169 Witness my hand and official seal this 26th day of June, A. D., 1854.

[SEAL.]

JAMES GRANT,
County Recorder.

Filed in office June 27, 1854.

GEO. FISHER, *Sec'y.*

Petition and order "M."—Petition for the removal from State court into U. S. court, &c.

District court, third judicial district for the State of California, county of Santa Clara.

JOSEPH L. FOLSOM
vs.
ANNA MARIA SPARK, ANNA CHRISTIANA GINDRUSS, FREDERICK CORDELIA LEIDSDORFF.

To the honorable the district court of the third judicial district for the State of California:

The petition of the undersigned, Anna Maria Sparks, respectfully shows that an action has been submitted in this honorable court

170 by one Joseph L. Folsom, against your petitioner and one Anna Christiana Gindruss and one Frederick Cordelia Leidsdorff; and your petitioner further shows that she, as well as well as one of her co-defendants, the said Anna Christiana Gindruss, resides in the island of St. Croix, and her other co-defendant, the said Fredericka Cordelia Leidsdorff, resides in the island of St. Thomas, both of said islands in the Danish West Indias, and that your petitioner and the said Anna Christiana Gindruss and Fredericka Cordelia Leidsdorff are all aliens, and subjects of the King of Denmark, and that the said Joseph L. Folsom is a citizen and resident of the State of California, and that the matter in dispute in said suit exceeds the sum or value of five hundred dollars exclusive of costs.

Wherefore your petitioner prays that said action or suit be removed from trial from this honorable court into the next district court of the United States for the northern district of California, setting as a circuit court, to be held in and for said district on the fifth

171 day of April next, in conformity to the act of Congress of the United States in such case made and provided; and the petitioner hereby offers to give good and sufficient security as required by said act 5 Jan'y, 1851.

M. H. & H McALLISTER,
Att'ys for Petitioner.

ANNA MARIA SPARKS,
Pr. T. BUTLER KING,
Attorney in fact.

Personally appeared Thomas Butler King, who, being duly sworn, saith he is the agent and attorney in fact of Anna Maria Sparks, who is absent from this county, and is a resident of the island of St. Croix, in the Danish West Indias; and deponent says he has read foregoing petition, and that the facts therein stated are true.

T. BUTLER KING.

Sworn to and subscribed before me this 5th day of January, A. D. 1852.

WARD McALLISTER, *N. P.*

172 Service of copy of within acknowledged this 5th Jan'y, 1852.

HALLECK, PEACHY & BILLINGS,
Att'y for Pl'ffs.

We consent that above case be removed in accordance with the prayer of the within petition.

Jan'y 25th, 1852.

HALLECK, PEACHY & BILLINGS,
Att'ys for Pl'ff.

Filed Feb'y 2nd, 1852.

H. C. MELONE, *Cl'k.*

Know all men by these presents, that we, Frederick A. Sawyer and Robert O. Sturdavent, of the city of San Francisco, in the county of San Francisco and State of California, are held and firmly bound unto Joseph L. Folsom, of the same place, in the penal sum of one thousand dollars, good and lawful money of the United States of America, to be paid to the said Joseph L. Folsom, his executors,
173 administrators, or assigns, to the which payment, well and truly to be paid, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Dated the 5th day of January, 1852.

Whereas the said Joseph L. Folsom has commenced a suit in the district court for the third judicial district of the State of California, in and for the county of Santa Clara, against Anna Maria Sparks, together with Anna Christiana Gindruss, and Frederika Cordelia Leidsdorff, all being aliens, and subjects of the King of Denmark; and the said Anna Maria Sparks is about to file his petition for the removal of said cause for trial into the next district court of the United States for the northern district of California, to be held on the fifth day of April next, A. D. 1852, pursuant to the provisions of the act of Congress of the United States in such case made and provided:

Now, therefore, the condition of this obligation is such, that if the said Anna Maria Sparks shall enter in the said district court of the United States for the northern district of the State of Cali-
174 fornia, the first day of the next session thereof, copies of the process against her in the above-recited cause, and shall there duly appear in the said cause in the said district court of the United

States, then this obligation to be void, otherwise to remain in full force and effect.

F. S. SAWYER. [L. S.]
R. O. STURDAVENT. [L. S.]

STATE OF CALIFORNIA,
County of San Francisco:

Frederick A. Sawyer and R. O. Sturdavent, being duly sworn, say, and each for himself says, that he is a resident and freeholder within the county of San Francisco, and is worth the sum of one thousand dollars, over and above all his debts and liabilities, exclusive of property exempt from execution.

F. A. SAWYER.
R. O. STURDAVENT.

Sworn and subscribed before me this 5th day of January, A. D. 1852.

WARD McALLISTER, *Notary Public.*

Service of copy of within acknowledged this 5th January,
175 1852.

HALLECK, PEACHY & BILLINGS,
Att'ys for Pl'tffs.

Filed Feb'y 2nd, 1852.

H. C. MELONE, *Cl'k.*

Filed April 5th, 1852. J. H. MUNER, *Clerk.*

District court, third judicial district of California, in and for the county of Santa Clara.

JOSEPH L. FOLSOM
vs.
ANNA MARIA SPARKS, ANNA CHRISTIANA GINDRUSS, FREDERICKA CORDELIA LEIDSDORFF.

The petitioner of Anna Maria Spark, defendant in above cause, having been presented to and filed in this court simultaneously with her appearance by the entry thereof on the calendar of this court, and by filing her answer to the complaint in above-entitled case, praying for the removal of above cause from this court into the district
176 court of the United States for the northern district of California, sitting as a circuit court in conformity with the act of Congress of the United States in such case made and provided; and the said Anna Maria Sparks having filed a bond, with good and sufficient security, which has been accepted by the court; and it appearing that the matter in dispute exceeds the sum or value of five hundred dollars exclusive of costs, and that said Anna Maria Sparks has complied in all respects with the said act of Congress, it is ordered that the prayer of said petitioner be granted, and that the said Anna Maria

Sparks do appear in the district court of the United States for the northern district of California, sitting as a circuit court, to be held at the town of San José and county of Santa Clara, in this State, on the 5th day of April next on the first day of said term, and that she do file in said court copies of the process and complaint in this case, together with copies of her answer and of all other papers of file in this court in the above-entitled cause.

177 C. P. HESTER,
Dist. Judge of the 3rd Judicial Dist. of the State of California.

Filed Feb'y 2nd, 1852.

H. C. MELONE, *Clerk.*

Filed April 5th, 1852.

J. H. MUNER, *Clerk.*

We agree that the case of J. L. Folsom *vs.* Anna Maria Sparks, Anna Christiana Gindruss, Fredericka Cordelia Leidsdorff, pending in the United States district court of San José, may be transferred to the city San Francisco for trial, and may be set down on the calendar of said court at San Francisco, to take the same course as if the complaint and answer had been originally filed in the clerk's office at San Francisco, 2nd April, 1852.

HALLECK, PEACHY & BILLINGS.
M. H. & H. McALLISTER, *For Def't.*

178 Filed April 5th, 1852.

J. A. MONROE, *Clerk.*

I, John A. Monroe, clerk of the U. S. dist. court for the northern district of California, hereby certify the foregoing to be true copies of the originals now on file in my office.

[SEAL] J. A. MONROE, *Clerk,*
By A. M. SCHELL, *D. C.*

Filed in office July 18, 1854.

GEO. FISHER, *Sec'y.*

U. S. naturalization papers of Wm. A. Leidsdorff.

United States court, eastern district of Louisiana, February session, 1834.

MONDAY, 24*th February*, 1834.

The court met pursuant to adjournment. Present: Hon. Samuel H. Harper.

Be it remembered, that on this day personally appeared in open court Wm. A. Leidesdorff, an alien, and made application to
179 be admitted a citizen of the United States, alleging that he had agreed in the United States when a minor under eighteen years of age, and that he had in all other requisites fulfilled the law; and in support of his said application, he exhibited to the court the following certificate, to wit:

I, Duncan N. Henner, cl'k of the district court of the United States

for the eastern district of Louisiana, do hereby certify that on the 24th day of February, 1834, Wm. A. Leidsdorff a white person, and an alien, in order to become a citizen of the United States made report and registry of himself as follows, to wit: that his name is as above stated; that he was born in Santa Cruz; that he is twenty-two years of age; that he is of Santa Cruz, and owes allegiance to the King of Denmark; that he migrated from Copenhagen, arrived in the United States in 1822, and that the place of his intended settlement is Baltimore, Maryland.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this 24th day of February, in the year of our Lord 1834, and of the independence
180 of the United States the 58th year.

DUNCAN N. HENNER, *Cl'k.*

The said Wm. A. Leidsdorff also exhibited to the court the following certificate, to wit: I, Duncan Nicholsen Henner, clerk of the said court, do hereby certify that on the 24th day of February, 1834, W. A. Leidsdorff, a white person, declared on oath before the said district court of the United States for the eastern district of Louisiana, that it is *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatsoever, and particularly to the King of Denmark, being the King whereof the said Wm. A. Leidsdorff was at the time a subject.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this 24th day of February, in the year of our Lord, 1834, and of the independence of the United States the 58th year.

181 DUNCAN N. HENNER, *Cl'k.*

And it being proved to the satisfaction of the court, on the testimony of A. Bredall and C. Walsh, both citizens of the United States, that he, the said W. A. Leidsdorff, did actually arrive in the United States when a minor under the age of eighteen years; that he had resided within this State for one year last past, and for at least five years within the United States, immediately preceeding this application; and that during that time he has behaved himself as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and government of the same, and thereupon the said Wm. A. Leidsdorff took the oath of naturalization as prescribed by law, and was admitted a citizen of the United States of America; and these proceedings were ordered to be recorded.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this 25th day of February, in the year of our Lord one thousand eight hundred and thirty-
182 four, and of the independence of the United States the fifty-eighth year.

[SEAL.] DUNCAN N. HENNER, *Clerk.*

Filed in office Aug. 2, 1854.

GEO. FISHER, *Sec'y.*

Certified copy from the clerk's office of U. S. circuit court

STATE OF CALIFORNIA,
County of Santa Clara, ss:

JOSEPH L. FOLSOM,
vs.
ANNA MARIA SPARK, ANNA CHRISTIANA GINDRUSS, FREDERICKA CORDELIA LEIDSDORFF.

In the district court of third judicial district for the State and county aforesaid.

The complaint of Joseph L. Folsom, plaintiff, against Anna Maria Spark, and Anna Christiana Gindruss, residents of the island St. Croix, Danish West Indies, and Frederika Cordelia Leids-
183 dorff, of the island of St. Thomas, Danish West Indies, defendants, respectfully shows to this court

Section 1st. That on or about the eighteenth day of May, A. D. eighteen hundred and forty-eight, William Alexander Leidsdorff, a naturalized citizen of the United States, and a citizen by naturalization of Mexico, died in the pueblo of Yerba Buena of San Francisco, and now the city of San Francisco, in the county of that name, and the State aforesaid, leaving a large real estate in the department of Upper California, now the State of California, part whereof is situated in the now county of Sacramento, part in the now city of San Francisco, and part in the now city of San José, in Santa Clara county, and also some personal property of small value, and some rights and credits, and that the decedent left a large amount of debts which were unpaid, on the 17th day of September, A. D. 1849, and which the plaintiff then assumed and paid, as will appear in a subsequent part of this complaint.

184 Section 2. That the said William Alexander Leidsdorff was never married, and at his death left no children, either legitimate or illegitimate, known to plaintiff: but left a sole surviving parent, Anna Maria Spark, one of the defendants, his mother, and two sisters, to wit, Anna Christiana, a defendant, who married Holger Gindruss, now deceased; and Adriana Leidsdorff, who married Karl Amonsen, and one niece, a daughter of his deceased brother, Frederick Laurentius Leidsdorff, who departed this life before the said William Alexander, leaving but one child, the said daughter, named Frederika Cordelia Leidsdorff, one of the defendants, who is an infant; and the said William Alexander left no other parent, or brother, or sister, or descendant of such.

Section 3. The plaintiff further shows that by certain articles of agreement made on the 17th day of September, A. D. 1849, between the said defendants, Anna Maria Spark, with her curator, and
185 the said Anna Christiana Gindruss, with the consent and concurrence of her husband, parties of the first part, and the plaintiff, party of the second part, the said parties of the first part, by the first article of said agreement, covenanted and promised to deliver

to the plaintiff in the city of New York, within two months from the date of said instrument, a proper deed conveying and assigning to the plaintiff all the right, title, interest, and estate in and to the property and effects of every description belonging to the said succession; the said defendants supposing themselves entitled, either jointly or severally, to one half part of said estate, and capable of conveying the same; and the plaintiff, in consideration of the matters and things covenanted as above to be done and performed, agreed with the said defendants to pay to each of them, on the execution of these articles of agreement, the sum of twenty-five hundred dollars in cash, and to give his bonds, with approved sureties, to pay to each of said defendants, parties of the first part, the further sum of eight thou-
186 sand seven hundred and fifty dollars within twelve months after the delivery to the plaintiff of the deed of conveyance, stipulated for in said article 1; and to pay to each of said parties of the first part the further sum of eight thousand seven hundred and fifty dollars in sixteen months after said date, all the aforesaid sums of money to bear interest at the rate of six per cent. per annum, from the day of the delivery of the said deed. Now the plaintiff avers that the said sum of twenty-five hundred dollars were paid to the said defendants in cash, according to the terms aforesaid, and that on the thirteenth day of November next ensuing, the date of the said articles of agreement, he gave his bonds to the said defendants for the payment of each of them of the aforesaid sums of money, according to the true meaning, tenor, and effect of said agreement, and that he also gave good and sufficient sureties for his fulfilment of the obligations of said bonds, which were accepted and approved by the said parties of the first part, through and by their agent thereto duly authorized,
187 who then and there delivered to the plaintiff the deed stipulated for in article first of said agreement, conveying to the plaintiff all the right, title, interest, and estate of the said parties of the first part in and to the one half part of the effects belonging to the said succession.

Section 4. The plaintiff further shews that, by article third of said agreement, the defendant Anna Maria Spark covenanted and agreed with the plaintiff, in the event of her being entitled to the whole of the said inheritance or succession, to sell and convey to the plaintiff the whole of her right, title, interest, and estate therein, for the further sum of thirty-five thousand dollars; and the said Anna Maria Spark covenanted with the plaintiff, if it should be decided by a proper legal tribunal, within a period of twenty months from the delivery to the plaintiff of the deed stipulated for in the aforesaid first article of said agreement, which turned out to be the 13th November, A. D. 1849, that she is the sole heiress of the said William Alexander Leidsdorff; that then, upon the receipt by her
188 of the plaintiff's bond, with approved sureties, for the said sum of thirty-five thousand dollars, bearing interest at the rate of six per cent. per annum from the aforesaid day of delivery, to wit, the 13th November, 1849, and payable twenty months thereafter, she would cede, make over, and convey to the plaintiff, the whole of her interest in the Leidsdorff estate, and sign, seal, and

deliver to the plaintiff any document or documents necessary to effect such transfer which should be laid before her by the plaintiff for that purpose; and in the event that such decision should not be made within said period, the said Anna Maria Spark covenanted and agreed with the plaintiff, at any time, upon the receipt of the said sum of thirty-five thousand dollars, with interest from the time and at the rate above mentioned, to sign and deliver any instrument which might be laid before her by the plaintiff to effect a conveyance to him of all her right, title, interest, and estate, in and to the whole of said inheritance.

189 It was further agreed between the parties to the aforesaid agreement, that in the event of the said Anna Maria Spark being entitled to the whole of said inheritance, the stipulations and covenants contained in articles one and two of said articles of agreement should be in nowise altered, weakened, or affected thereby.

Section 5th. The plaintiff further shows that on the 26th day of September, A. D. 1849, certain articles of agreement were made by and between the defendants, Anna Maria Spark, with her curator, and Frederika Cordelia, the infant, by her guardian, Christian Muller, parties of the first part, and the plaintiff, party of the second part, whereby the said guardian covenanted to sell and convey to said plaintiff, by a deed to be delivered to the plaintiff in New York, within two months from the date of these articles of agreement, all the right, title, interest, and estate of the said infant defendant in and to the said inheritance, supposing her share to be the one-

190 fourth part thereof, for the sum of eighteen thousand nine hundred dollars; fourteen hundred dollars, part whereof, to be paid in cash, on the signing of said agreement, and the balance of seventeen thousand five hundred dollars to be secured by bond, with approved sureties, bearing interest at the rate of six per cent. per annum from the day of the delivery to the plaintiff of the said deed of conveyance, and payable twenty months thereafter. Now, the said plaintiff avers that the said sum of fourteen hundred dollars was paid in cash, according to the terms of said agreement, and that he gave his bond in accordance therewith, and proper sureties, approved and accepted by Isaiah C. Wetmore, authorized to approve and accept the same, who then and there delivered to the plaintiff the deed conveying the infant's portion of said inheritance, as above explained.

Section 6. The plaintiff further shows that by the third article of the last-mentioned articles of agreement the defendant, Anna

191 Maria Spark, covenanted and agreed with the plaintiff, in the event of her being entitled to the whole of the said inheritance, to sell and convey the whole of her interest and estate therein to the plaintiff, upon the terms and in the manner stated in the fourth section of this complaint, with this exception, that the bond of the plaintiff to be given in favor of the said infant for the sum of seventeen thousand five hundred dollars, and the cash payment of fourteen hundred dollars made to the said infant as aforesaid, shall be taken, accepted, and considered by the said Anna Maria Spark as part payment, to the amount of eighteen thousand nine hundred dollars, of the sum of thirty-five thousand dollars, mentioned in article third of

the articles of agreement, made on the 17th day of September, A. D. 1849, above set forth.

And the said Anna Maria Spark binds herself to fulfil all the covenants and agreements contained in said third article of the articles of agreement made on 17th September, A. D. 1849, in consideration of the sum of sixteen thousand one hundred dollars, with in-
192 terest, to be secured by bond, or paid in cash, as therein provided, for the sum of thirty-five thousand dollars.

And it is further provided and agreed upon in these articles of agreement of the 26th day of September, A. D. 1849, that in the event of Anna Maria Stark being entitled to the whole of the said inheritance, the first and second articles of this agreement shall be in nowise altered, weakened, or affected thereby, but shall continue and remain in force.

Section 7. The plaintiff further shews that for the purpose of obtaining the possession of the effects belonging to said succession, and for the greater control in the management and disposition thereof during the period of uncertainty in regard to the law regulating the descent of said inheritance, he took powers of attorney from the defendants Anna Maria Spark and the said Anna Christiana Gindruss and from the infant Frederika, by her said guardian, which powers of attorney were given for the sole use, benefit and convenience
193 of the plaintiff, at the same time that the aforesaid purchase and agreements to purchase were made, and as a part of the same transaction. That, acting under the power of attorney given him by the said Anna Maria Spark, the plaintiff filed his petition before the Hon. John W. Geary, judge of the first instance and first alcalde of the district of San Francisco, on the 20th January, A. D. 1850, alleging Anna Maria Spark to be the sole heiress of the said William Alexander Leidsdorff, and praying to be put into possession of all the effects belonging to the said succession.

That on the 12th day of February next ensuing it was decided by the said court that the said Anna Maria Spark is the sole heiress of the said Leidsdorff, entitled to succeed to all the effects belonging to the said succession, and the administrator of the said estate was directed to deliver to the plaintiff all the property of every kind belonging thereto, which was accordingly done.

That a copy of said decree, as therein ordered, was despatched by the next mail to the said Anna Maria Spark, who received it
194 in the due course of mail; and that the plaintiff, within a short time thereafter, and as soon as possible after the making of the said decree, to wit, on the 10th day of August, A. D. 1850, made his bond in favor of the said Anna Maria Spark, with sureties approved and accepted by her, for the sum of sixteen thousand one hundred dollars, payable in twenty months after the 13th of November, A. D. 1849, and bearing interest at the rate of six per cent. per annum, from date, in full and entire compliance with the terms of the aforesaid agreement, which bond was delivered to, and accepted by, the said Anna Maria Spark as a full performance of the plaintiff's said contracts.

Section 8. The plaintiff further shews that, for the security of the

obligees in all the before-mentioned bonds, he deposited the sums of of money, for which said bonds were respectively given, in the hands of an agent of the said obligees, subject to the payment of the debts secured by the said bonds. That said deposits were made at
195 the time of executing the bonds, and that the sums so deposited were in addition to the personal sureties required by the obligees and their attorneys.

Section 9. The plaintiff further shews that on or about the 19th day of May, at St. Croix, he laid before the defendant, Anna Maria Spark, and her curator, an instrument in writing, designed for the conveyance to the plaintiff of all the estate, interest, and title of the said Anna Maria Spark in and to the said inheritance, according to the terms and true meaning of the covenants and agreements aforesaid, made by her with the plaintiff, and demanded of her the execution of the said instrument to effect that object; and that the said Anna Maria Spark, in violation of her covenants and agreements, then and there refused to execute the said instrument, and hath continually refused so to do, and hath not, since the making of the said contracts, executed any instrument conveying to the plaintiff her right, title, interest, and estate, in and to the whole of said inheritance, according to the terms of her said contracts, or in any
196 other manner.

Section 10. And the plaintiff further shews that in addition to the sums of twenty-five hundred dollars paid to each of the defendants, Anna Maria Spark and Anna Christiana Gindruss, according to the terms of the second article of these articles of agreement, made on the 17 day of September, A. D. 1849, he hath paid, to wit: on the 13th day of November, A. D. 1850, to each of said defendants, the sum of eight thousand seven hundred and fifty dollars, and interest, being the first instalment on the bonds to each of said defendants, given by the plaintiff in pursuance of the second article of the last-mentioned articles of agreement, which payments were readily accepted by the said defendants; and that he hath tendered to each of said defendants payment of the last instalment and interest, which became due on the said bonds on the 13th day of March, A. D. 1851, which payment the said defendants refused to accept; and that he hath paid the just debts of the said succession, since the 17th
197 day of September, A. D. 1849, to the amount of eighty thousand dollars, which debts he, the said plaintiff, as the purchaser of said succession under the said contracts, and by the operation of law, became individually responsible for and liable to pay, and that for all said plaintiff knows to the contrary, there may be other debts of the same character, will he will be obliged to pay.

Section 11. The plaintiff farther shews that he is ready and willing, and hereby offers to pay to the said defendants, Anna Christiana Gindruss and Anna Maria Spark, each, the sum of eight thousand seven hundred and fifty dollars, and interest, being the last instalment on the bonds given by him as aforesaid, according to article second of the said articles of agreement made on the 17th day of September, 1849, and tendered and refused as aforesaid; and also, to pay to the said infant the sum of seventeen thousand five hundred

dollars, with interest, as stipulated in the second article of the said articles of agreement of the 26th September, 1849; and also,
198 to pay to the said Anna Maria Spark the sum of sixteen thousand one hundred dollars, with interest, as stipulated in the third article of the last-mentioned articles of agreement, when the said Anna Maria Spark shall perform her covenant and agreement with the plaintiff for the conveyance to him of all her right, title, interest, and estate, in and to the effects of the said succession, according to the third article of each of the aforesaid articles of agreement, or to abide by such order as this court shall make in the disposition of said moneys and bonds, upon receiving the aforesaid conveyance.

Section 12. The plaintiff farther shews that, since the making of the said purchases and agreements to purchase, he has devoted nearly the whole of his time to the management and improvement of the property which he then acquired.

That he has been engaged in expensive and vexatious litigation, in defending and protecting the same; that he has expended
199 large sums of money, amounting, in all, to more than one hundred and fifty thousand dollars, in improving the said property, and has sustained heavy losses, by fire and otherwise, in the destruction of his improvements; that a large portion of the value of the said property is owing to the care, industry, and judgment with which it has been managed, and to the capital expended on it by the plaintiff.

That at the time of the said purchases and agreements to purchase the real and permanent value of the property in the said succession, in the city of San Francisco, where its great bulk and value lay, was in the highest degree problematical, depending rather upon the hopes and anticipations of men than on the solid basis of established commerce and well tested sources of prosperity.

That the title of the said Leidesdorff to almost the entire property of said succession was involved in doubt, and that in maintaining it and procuring the confirmation of title to a large and valuable portion thereof the plaintiff hath been put to great expense and trouble;
200 and that in the payment of the sum of seventy-five thousand dollars for the interest of the heirs, and in assuming the debts of said succession, the plaintiff hath given a full, adequate, and ample consideration for the property which he purchased.

Section 13. The plaintiff farther shews and avers that, according to the laws of succession which prevailed at the time of the death of the said William Alexander Leidesdorff, the said defendant, Anna Maria Spark, being the sole surviving parent of the said deceased, was entitled to succeed, and did succeed, to all the effects, rights, and credits of said succession, and that all the right, title, interest and estate of the said Anna Maria Spark in and to the same were sold and conveyed to the plaintiff by the aforesaid deed of the seventeenth September, A. D. one thousand eight hundred and forty-nine, except so much thereof as the said Anna Maria Spark covenanted and agreed to sell to plaintiff according to the terms of her aforesaid contract of the seven-

201 teenth and twenty-sixth days of September, one thousand eight hundred and forty-nine.

Section 14. The plaintiff hereby files a copy of the articles of agreement made on the seventeenth day of September, A. D. 1849, between the defendants, Anna Maria Spark, and her curator, and Anna Christiana Gindruss, with the consent and concurrence of her husband, parties of the first part, and the plaintiff, party of the second part, marked "Exhibit A," and also a copy of the conveyance to plaintiff made on the seventeenth day of September, A. D. one thousand eight hundred and forty-nine, by the said Anna Maria Spark, with her curator, and the said Anna Christiana Gindruss, with the consent and concurrence of her husband, of the one-half part of the said inheritance, marked "Exhibit B," and also a copy of the articles of agreement made on the twenty-sixth day of September, A. D. one thousand eight hundred forty-nine, between the said Anna Maria Spark, with her curator, and the said Frederika Cordelia, by her guardian,

202 parties of the first part, and the plaintiff, party of the second part, marked "Exhibit C," all of which exhibits the plaintiff prays may be taken as part of this complaint.

Section 15. The plaintiff avers that he has performed all the conditions precedent on his part, and all other conditions necessary to entitle him to a specific performance by the defendant, Anna Maria Spark, of the matters and things covenanted and agreed by her to be done and performed as aforesaid.

Section 16. The plaintiff therefore prays judgment of this honorable court that the defendant, Anna Maria Spark, be decreed to perform specifically her said contracts, by executing to the plaintiff a conveyance of all her right, title, interest, and estate, in and to the property and effects of every kind whatsoever left by the said William Alexander Leidesdorff, in the State of California, and belonging to

203 the said succession, whether the same be real, personal, or mixed, or consists of rights and credits.

And the plaintiff, for his own security, and that he may be protected from all future demands and litigation on the subject, further prays for the direction of this honorable court in regard to the disposition of the sums of money paid in cash, as aforesaid, to the said Anna Christiana Gindruss, and the said infant Frederika Cordelia, and also of the aforesaid sums of money secured to the said last-named defendants, respectively, by his aforesaid bonds.

And the plaintiff prays for his costs and charges in this behalf expended, and for such other and farther relief as may be required to afford him a full, adequate, and complete remedy for the wrongs which he hath sustained in the premises.

HALLECK, PEACHEY & BILLINGS,
Attorneys for the Plaintiff.

Oct. 13, 1851.

204 On this thirteenth day of October, A. D. 1851, before me personally appeared Joseph L. Folsom, the plaintiff in the foregoing complaint, who made oath that the matters and things contained in the foregoing complaint are true of his own knowledge, except as

to the matters which are therein stated on information or belief, and that as to those matters he believes them to be true.

And plaintiff further made oath that the defendants Anna Maria Spark and Anna Christiana Gindruss are residents of the island of Santa Cruz, and that the defendant Frederika Cordelia Leidsdorff is a resident of the island of St. Thomas, both of said islands being in the Danish West Indies.

And the plaintiff farther makes oath that the facts set forth in said complaint constitute a cause of action against each of said defendants, and that each of said defendants is a proper party to the said action, and that each of said defendants resides out of the State of California.

J. L FOLSOM.

205 STATE OF CALIFORNIA,
County of Santa Clara:

Personally appeared before me the above-named Folsom, who was by me duly sworn to the above affidavit.

C. P. HESTER,
Dist. Judge.

October 13th, 1851.

Exhibit A.

This stamp is hereby authorized as appertaining to the annexed contract between Anna Maria Spark, with curator, L. Heitmann, and Anna Christiana Gindruss, with her husband, H. Gindruss, on the one side, and Joseph L. Folsom, captain of the United States army, on the other side; signed and sealed before me, as notary public in the town and jurisdiction, St. Croix, this seventeenth day of September, one thousand eight hundred and forty-nine.

(Signed) HESS.

206 This agreement witnesseth that we, the undersigned, Anna Maria Spark, with my curator, Ludwig Heitmann, and Anna Christiana, born Leidsdorff, now married to Holger Gindruss, with the consent and concurrence of my husband, the said Holger Gindruss, who also signed this document, on the one side, and I, the undersigned Joseph Libby Folsom, captain of the United States army, on the other hand, hereby bind and oblige ourselves to the following articles of agreement, viz:

1st. We, the undersigned, Anna Maria Spark, with my curator, Ludwig Heitmann, and Anna Christiana Lindruss, with my husband, Holger Gindruss, bind ourselves to deliver or cause to be delivered in the city of New York, within two months furtherest from date, a proper deed and document signed and sealed by us, and certified by the proper authorities, conveying and transferring unto the said Joseph Libby Folsom, his heirs, administrators, or assigns, all our right, claim, and title to the whole inheritance and estate left in Cal-
207 ifornia by the deceased William Alexander Leidesdorff, of this island, who departed this life in San Francisco, California,

some time in the year 1848, whether outstanding debts, personal or real property, all, provided he, the said Joseph Libby Folsom, or his legal representative, complied with the stipulations in this agreement, and subject to the stipulations and conditions contained in article 3rd of this agreement.

2nd. In consideration of the deed of transfer, to be delivered to me, as above stated, I, the undersigned, Joseph Libby Folsom, hereby bind myself, or my legal representatives, to pay unto the said Anna Maria Spark, her heirs, executors or administrators, the sum of $20,000, say twenty thousand dollars, and to the said Anna Christiana Gindruuss, her heirs, executors, or administrators, the sum of $20,000, say twenty thousand dollars, amounting togehter to $40,000, say forty thousand dollars; the said sums to be payable as follows, viz: $2,500, say two thousand five hundred dollars, to be paid to each of the two
208 last-mentioned parties on the signing of this contract, the receipt of which sums is hereby acknowledged; $8,750, say eight thousand seven hundred and fifty dollars, to be paid to each of the said Anna Maria Spark and Anna Christiana Gindruss, or their legal representatives, in twelve months from the day of delivery to me of the said deed of transfer, with interest thereon from the said day of delivery, at the rate of six per cent. per annum; and $8,750, say eight thousand seven hundred and fifty dollars, to be paid to each of the said Anna Maria Sparks and Anna Christiana Gindruss, or their legal representatives, in sixteen months from the day of delivery of the said deed of transfer, with interest thereon at the rate of six per cent. per annum from the said day of delivery. For the said two sums of $8,750, each, to the said Anna Maria Spark, and the said two sums of $8,750, each, to Anna Christiana Gindruss, payable in this island, at the terms and with interest, as within mentioned, the said Joseph Libby Folsom binds himself, or his legal represen-
209 tatives, to deliver to Holger Gindruss, of this island, or to any other person or persons as may be duly authorized thereto in lieu and place of him, by the said Anna Maria Spark, and the said Anna Christiana Gindruss, due and proper bonds, accompanied with such securities as the person then authorized by the said Anna Maria Spark, and the said Anna Christiana Gindruss, and in case of any doubt on his part, as the Danish consul in New York, or the Danish minister at the government of the United States, shall consider satisisfactory.

3rd. The conveyance mentioned above in article first, and the sum of forty thousand dollars mentioned above in article 2nd, are stipulated under the supposition and the belief that we, Anna Maria Spark and Anna Christiana Gindruss, are entitled, each, to one fourth of the whole inheritance left by the late William Alexander Leidesdorff; but as it is possible that the competent legal authorities may decide that the whole of said inheritance devolves unto me, the undersigned, Anna Maria Spark, alone, being the mother of the deceased,
210 now I, the said Anna Maria Spark, with my undersigned curator, Ludwig Heitman, do hereby bind and oblige myself, my heirs, executors, and administrators, that in case it shall be thus legally decided that I am entitled, as sole heiress, to the whole of the

inheritance of the said William Alexander Leidesdorff, that then and in that case I, or they, will cede or make over unto the said Joseph Libby Folsom all my right and title to the whole inheritance and estate left in California by my son, the said William Alexander Leidesdorff, for and in consideration of the further sum of $35,000, say thirty-five thousand dollars, at the same time declaring that the agreement here entered into in the preceding articles, 1st and 2nd, shall not in anywise be affected or weakened by such decision, or acknowledgment of my right as sole heiress; and for the purpose of carrying into full effect this promise and obligation, I furthermore bind and oblige myself, my heirs, administrators and assigns,
211 immediately on the receipt and delivery to me of the bond, to be mentioned presently, in the 3rd article of the present agreement, or in case of such decision not being obtained within 20 months from the delivery of the said document, then, on the receipt of the sum of $35,000, with interest in ready money, as hereinafter mentioned, to sign and deliver unto the said Joseph Libby Folsom, or his legal representatives, or any such person or persons as shall be legally authorized by him to that effect, any document or documents to that effect that may be required of me, and for that purpose laid before me by him or his proper agent.

And I, the undersigned Joseph Libby Folsom, on the other hand, hereby bind and oblige myself, my heirs, executors, and administrators, that as soon as it shall be legally decided that Anna Maria Spark is the sole heiress to the whole inheritance and estate of the deceased William Alexander Leidesdorff, I shall, without any unnecessary delay, deliver or cause to be delivered unto her, her heirs,
212 executors or administrators, on her or they signing and delivering a proper legal conveyance and transfer for the whole of the inheritance and estate left by the said William Alexander Leidesdorff, a bond or more bonds, duly executed and signed by me or by my representatives, and strengthened with the sureties as the bonds mentioned in article 2nd of this agreement, for the sum of $35,000, say thirty-five thousand, payable four months after *the prior where** the last of the sum mentioned in article 2nd shall become due, and payable (say) in twenty months from the day of the delivery of the documents mentioned in articles 1st and 2nd of this agreement, with interest at six per cent. per annum, from the said last mentioned day of delivery. In the unexpected case that this question should not be legally decided at the time when the said bond or bonds for $35,000 are to be made payable as here last mentioned, then in that case the sum of thirty-five thousand dollars, with interest at the rate of six per cent. per annum from the above-mentioned day of delivery,
213 is to be paid by me, my heirs, executors or administrators, to the said Anna Maria Spark, her heirs, executors or administrators, on proper and legal demand being made by her or them, as soon as she, the said Anna Maria Spark, has been legally declared to be the sole heiress to the said inheritance and estate of William Alexander Leidsdorff, and *on her or their* declaring their willingness to sign and deliver proper deeds of transfer and conveyance thereof.

*Exact copy.

4th. I, the undersigned Joseph Libby Folsom, bind myself and my legal representatives to furnish security for the fulfilment of my engagements as specified in this contract, to the full and entire satisfaction of the undersigned, Holger Gindruss, or of any other person or persons as may be duly authorized thereto in lieu and place of him by the said Anna Maria Spark, and the said Anna Christiana Gindruss, on the delivery of the document or documents, as mentioned in article 1st of this agreement.

In testimony whereof, I, the said Anna Maria Spark, not
214 versed in the art of writing, have hereunto fixed the sign of the cross; and I, the said Ludwig Heitmann, as well as the said Anna Christiana Gindruss and the said Holger Gindruss, also *also* the said Joseph Libby Folsom, have hereunto set our signatures and seals, in the Danish island of St. Croix, West Indies, this seventeenth day of September, in the year of our Lord one thousand eight hundred and forty-nine.

(Signed) ANNA MARIA her + cross SPARK. [SEAL.]
L. HEITMANN. [SEAL.]
ANNA CHRISTIANA GINDRUSS. [SEAL.]
HOLGER GINDRUSS. [SEAL.]
J. L. FOLSOM. [SEAL.]

Witness to the signatures of Anna Maria Spark, L. Heitmann, Anna Christiana Gindruss, Holger Gindruss, and J. L. Folsom:

R. A. FINLAY.
J. W. HOPE.

At St. Croix, one of the Danish West India islands, on the
215 seventeenth day of September, in the year of our Lord one thousand eight hundred and forty-nine, personally appeared before me, Ole Stampe Foss, duly authorized judge, recorder, and notary public, for the town and jurisdiction of Christiansted, St. Croix, in the absence of the ordinary judge and notary public, Fritz William Didricksen, who is prevented from sickness from acting, Anna Maria Spark, with her duly appointed curator, Ludwig Heitmann, who exhibited his appointment, date the 9th March, 1846; likewise appeared before me Anna Christiana Leidesdorff, with her husband, H. Gindruss, and J. L. Folsom, captain of the United States army, all to me known as the persons named in the foregoing instrument; and after subscribing their names thereto in presence of me and witnesses, acknowledged the same to be their free act and deed, executed for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, dated as above.

(Signed) HOSS.

Witnesses to the foregoing act:
216 W. W. KRAUSE.
J. W. HATCHETTE. [SEAL.]

Fees, &c., $11 60, say eleven dollars, sixty cents.

HOSS.

I, Holger Gindruss, the person authorized to accept for the within-named Anna Maria Spark and the said Anna Christiana Gindruss due and proper bonds, accompanied with securities, from the within-named Joseph Libby Folsom, which I should consider satisfactory, (as by the within agreement, and in full conformity therewith, I am so authorized to take and accept,) do hereby acknowledge and declare that I have received and accepted from the within-named Joseph Libby Folsom the proper bonds and securities within mentioned, for the sum of seventeen thousand five hundred dollars, to the said Anna Christiana Gindruss, and seventeen thousand five hundred dollars to the said Anna Maria Spark, within mentioned; and upon con-
217 sideration, and by virtue of the authority vested in me, have determined the same to be entirely satisfactory, and so far forth as the same shall be necessary to show full and ample performance on the part of the said Captain Joseph Libby Folsom, I do acknowledge and declare that in such respect the said Captain Joseph Libby Folsom has fully and satisfactorily performed the within agreement on his part.

In witness whereof I have hereunto set my hand and seal, this thirteenth day of November, in the year of our Lord one thousand eight hundred and forty-nine.

(Signed) HOLGER GINDRUSS. [SEAL.]

As witnesses:

HENRY CHAUNCEY.
E. A. SUWERKROP.
JAMES P. RICKIOT.
WM. J. HOPPIN.

218 *Exhibit A.*

UNITED STATES OF AMERICA,
Southern district of New York, ss:

On this thirteenth day of November, in the year of our Lord one thousand eight hundred and forty-nine, Holger Gindruss personally came before me, and acknowledged that he had executed the within instrument as the act and deed of Anna Maria Spark, Anna Christiana Gindruss, and of said Holger Gindruss, therein described, by virtue of a power of attorney, duly executed by the said parties, bearing date the twenty-seventh day of September, in the year one thousand eight hundred and forty-nine.

And at the same time appeared James P. Tickiot, of the city of New York, to me known, who, being by me duly sworn, deposed and said that he knew the individual who made the said acknowledgment to be the same person who executed the within instrument; which is to me satisfactory evidence thereof.

In witness whereof, I have hereunto set my hand and seal, at the city of New York.

(Signed) SAM'L R. BETTS, [SEAL.]
219 *U. S. Judge, &c.*

Exhibit B.

This stamp is hereby authorized, as appertaining to the annexed conveyance and transfer from Anna Maria Spark with curator, L. Heitmann, and Anna Christiana Gindruss, with husband, H. Gindruss, by which they do, for the sum of forty thousand dollars, transfer and make over unto J. L. Folsom, captain of the United States army, certain rights or properties mentioned in the annexed instrument of writing, executed before me as notary public in the town and jurisdiction of Christiansted, St. Croix, this 17th day of September, 1849.

HOSS.

We, the undersigned, Anna Maria Spark, with my undersigned curator, Ludwig Heitmann, and Anna Christiana, borne Leidesdorff, with the consent and concurrence of my husband, Holger
220 Gindruss, who likewise subscribes this document, do hereby declare to have conveyed, transferred, and made over, and we do hereby convey, transfer, and make over, under the condition hereinafter mentioned, with Joseph Libby Folsom, captain in the United States army, his heirs, administrators, or assigns, all our right and title to one undivided half of the inheritance and estate left in the province or territory of California by William Alexander Leidesdorff, son of the said Anna Maria Spark, and brother of the said Anna Christiana Gindruss, which said William Alexander Leidesdorff, a native of this island, died some time in the year 1848, in San Francisco, California, under the supposition and full belief that the said Anna Maria Spark and Anna Christiana Gindruss are jointly or individually the legal heirs to the one-half of the whole estate. And the condition of this conveyance and transfer being that the said Joseph Libby Folsom or his legal representative, over and above the sums of two thousand five hundred dollars paid to the said Anna Maria Spark, and the sum of two thousand five hundred
221 dollars paid to the said Anna Christiana Gindruss, the receipt of which money is hereby acknowledged, give his bonds or obligations to the amount of $17,500, (say) seventeen thousand five hundred dollars, to the said Anna Maria Spark, and also his bonds or obligations to the amount of $17,500, (say) seventeen thousand five hundred dollars to the said Anna Christiana Gindruss, with good and undoubted sureties, in such manner as has been separately stipulated and agreed upon; now it is hereby declared and acknowledged that as soon as the undersigned, Holger Gindruss, or any such person as may be proved to have been duly appointed by us to that effect, in the place and stead of the said Holger Gindruss, shall have signed in due and legal form upon this document, that the bonds for $17,500 in favor of the undersigned, Anna Maria Spark, and the bonds for $17,500 in favor of the undersigned, Anna Christiana Gindruss, with the sureties to the full and entire satisfaction of him, the said Holger Gindruss, or the persons duly appointed to act
222 in his stead as mentioned, have been delivered to him and are in his possession; that from that time the conveyance and

transfer of all the right and interest which we now have, or may have jointly or individually as heirs, under the full belief that we have the legal right thus jointly and individually to transfer and convey away one-half of the whole of said estate or inheritance, but without any guarantee or responsibility on our part in that respect, to one-half of the whole inheritance and estate left in the province or territory of California, unto the said Joseph Libby Folsom, his heirs, administrators, or assigns, is to be considered as finally consummated and gone in to effect; and as soon as thesaid acknowledgment for the receipt of the bonds, with sureties as above mentioned, shall have been written and signed upon this document as within stated, this present document shall become and serve as a pure and unconditional conveyance and transfer of our right and title, as joint or individual heirs to one undivided half of the whole inheritance and estate left in California by the late William Alexander Leidesdorff, as stated and described above.

223 In testimony whereof, I, the said Anna Maria Spark, not versed in the art of writing, have hereunto fixed the sign of the cross; and I, the said Ludwig Heitmann, as well as the said Anna Christiana Gindruss, and the said Holger Gindruss, have hereunto set our signatures and seals, in the Danish island of St. Croix, West Indies, this 17th day of September, in the year of our Lord one thousand eight hundred and forty-nine.

(Signed) ANNA MARIA her + cross. SPARK. [SEAL.]
L. HEITMANN. [SEAL.]
ANNA CHRISTIANA GINDRUSS. [SEAL.]
HOLGER GINDRUSS. [SEAL.]

Witness to the signatures of Anna Maria Spark, L. Heitmann, Anna Christiana Gindruss, Holger Gindruss:
R. A. FINLAY.
J. W. HOPE.

At St. Croix, one of the Danish West India islands, on the 17th day of September, in the year of our Lord one thousand
224 eight hundred and forty-nine, personally appeared before me, Ole Stampe Foss, duly authorized judge, recorder, and notary public for the town and jurisdiction of Christiansted, St. Croix, in the absence of the ordinary judge and notary public, Fritz William Didricksen, who is prevented by sickness from acting, Anna Maria Spark, with her duly appointed curator, Ludwig Heitmann, who exhibited his appointment, dated the 9th of March, 1846; likewise appeared before me Anna Christiana Gindruss, with her husband, H. Gindruss, to me known as the persons named in the foregoing instrument, and after subscribing their names thereto in presence of me and witnesses, acknowledged the same to be their free act and deed, executed for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, dated as above.

(Signed) HOSS. [SEAL.]

Witness to foregoing act:
M. H. KRAUSE
J. W. HATCHETT.

225 Fees, &c., $11 60 (say) eleven dollars and sixty cents.

I, Holger Gindruss, the person authorized to accept for the within-named Anna Maria Spark and the said Anna Christiana Gindruss due and proper bonds, accompanied with sureties, from the within-named Joseph Libby Folsom, which I should consider satisfactory, (as by the within-agreement, and in full conformity therewith, I am so authorized to take and accept,) do hereby acknowledge and declare that I have received and accepted from the within-named Joseph Libby Folsom the proper bonds and sureties within mentioned for the sum of seventeen thousand five hundred dollars to the said Anna Christiana Gindruss, and seventeen thousand five hundred dollars to the said Anna Maria Spark within mentioned; and upon consideration and by virtue of the authority vested in me, have determined the same to be entirely satisfactory; and so far forth as the same shall be necessary, to show full and ample performance on the part of the said Captain Joseph Libby Folsom. I do acknowledge
226 and declare that in such respect the said Captain Joseph Libby Folsom has fully and satisfactorily performed the within agreement on his part.

In witness whereof, I have hereunto set my hand and seal this thirteenth day of November, in the year of our Lord one thousand eight hundred and forty-nine.

(Signed) HOLGER GINDRUSS. [SEAL.]

As witnesses:
HENRY CHAUNCEY.
E. A. SUWERKROP.
JAMES F. TICKROT.
U. J. HOPPIN.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this thirteenth day of November, in the year of our Lord one thousand eight hundred and forty-nine, personally came before me Holger Gindruss, and acknowledged that he has executed the within instrument as the act and deed of Anna Maria Spark, Anna
227 Christiana Gindruss, and of said Holger Gindruss, therein described, by virtue of a power of attorney duly executed by the said parties, bearing date the twenty-seventh day of September, in the year one thousand eight hundred and forty-nine. And at the same time appeared James T. Tickiott, of the city of New York, to me known, who, being by me duly sworn, deposed and said that he knew the individual who made the said acknowledgment to be the

same person who executed the said instrument; which is to me satisfactory evidence thereof.

In witness whereof, I have hereto set my hand and seal, at the city of New York.

[SEAL.] (Signed) SAM'L R. BETTS, [SEAL.]
U. S. Judge.

228 *Exhibit C.*

This agreement witnesses that, whereas an agreement was signed, sealed, and delivered on the 17th day of the present month of September, in the year of our Lord one thousand eight hundred and forty-nine, between Anna Maria Spark, with her curator, Anna Christiana Gindruss, Holger Gindruss, and Joseph Libby Folsom, respecting the transfer to the said Joseph Libby Folsom of the rights of the said Anna Maria Spark and Anna Christiana Gindruss to the inheritance of the late William Alexander Leidesdorff; now in like manner we, the undersigned, Anna Maria Spark, with my undersigned curator, Ludwig Heitmann, and Christian Muller as guardian to the minor Frederika Cordelia Leidesdorff, in conformity with the special authority vested in me by his excellency, the governor general, on the one side, and I, the undersigned, Joseph Libby Folsom, captain in the army of the United States of North America, on the other side, hereby bind and oblige ourselves to the following articles of agreement, viz:

1st. We, the undersigned, Anna Maria Spark, with her
229 undersigned curator, Ludwig Heitmann, and Christian Muller in behalf of the minor Frederika Cordelia Leidesdorff, bind ourselves to deliver or cause to be delivered, in the city of New York, within two months farthest from date, a proper deed and document, signed and sealed by the undersigned, Christian Muller, as guardian to the said Frederika Cordelia Leidesdorff, and certified by the proper authorities, conveying and transferring unto the said Joseph Libby Folsom, his heirs, administrators, and assigns, all the right, claim, and title of the said Frederika Cordelia Leidesdorff to one fourth part of the whole inheritance and estate left in California by the deceased William Alexander Leidsdorff, of this island, who departed this life in San Francisco, California, some time in the year 1848—whether outstanding debts, personal or real property: all provided he, the said Joseph Libby Folsom, or his legal representatives, complies with the stipulations of this agreement, and subject to the stipulations and conditions contained in article 3rd of this agreement.

230 2nd. In consideration of the deed of transfer, to be delivered to me as above stated, I, the undersigned, Joseph Libby Folsom, hereby bind myself or my legal representatives to pay unto the said Frederika Cordelia Leidesdorff, her heirs, or legal representatives, the sum of $18,900, (say) eighteen thousand nine hundred dollars, to be paid as follows, viz: $1,400, say, one thousand four hundred dollars, to be paid on the signing of this contract, and the receipt whereof is hereby acknowledged; and the remaining sum of $17,500, (say)

seventeen thousand five hundred dollars, to be paid in twenty months from the day of the delivery to me of the said deed of transfer, with the interest thereon, from the said day of delivery, at the rate of six per cent. per annum for the last mentioned sum of seventeen thousand five hundred dollars, payable in the island of Saint Thomas, at the terms and with interest thereon as within mentioned.

I, the said Joseph Libby Folsom, bind myself and my legal representatives to deliver to the said Christian Muller, or to any
231 other such person or persons as may be duly authorized to act in lieu and place of him, one or more legal or proper bonds, accompanied with such securities as the said Christian Muller, or the person thus authorized by him; and in case of any doubt on his part, as the Danish consul in New York, or the Danish minister at the government of the United States, shall consider and declare to be satisfactory.

3rd. The conveyance mentioned above in article 1st, and the sum of eighteen thousand nine hundred dollars mentioned above in article 2nd, are stipulated under the supposition and belief that Frederika Cordelia Leidesdorff is entitled to one-fourth part of the whole inheritance left by the William Alexander Leidesdorff. But as it is possible that the competent legal authorities may decide that the whole of the said inheritance devolves unto me, the said Anna Maria Spark, alone, being the mother of the deceased, now I, the said Anna Maria Spark, with my undersigned curator, Ludwig Heitmann, do hereby declare and acknowledge that in such case the sum of eighteen
232 thousand nine hundred dollars, stipulated in this present agreement, in consideration of the transfer of the right and claim of Frederika Cordelia Leidesdorff as above stated, shall be considered and looked upon as part payment of the sum of thirty-five thousand dollars, stipulated in the agreement entered into on the seventeenth day of this month as mentioned above, for the transfer of the remainder of the whole of the said inheritance and estate. And I consequently now hereby bind and oblige myself, my heirs, executors, administrators, and assigns, in case that I should be legally declared to be the sole heiress to the whole inheritance and estate of the said William Alexander Leidesdorff, that in that case I or they shall cede and make over unto the said Joseph Libby Folsom, all my right and title to the whole inheritance and estate left in California by my son, the said William Alexander Leidesdorff, for and in consideration of the further sum of $16,100 (say sixteen thousand one hundred dollars)
233 over and above the sum of eighteen thousand nine hundred dollars, stipulated in articles 1st and 2nd of this present agreement, and the sum of forty thousand dollars stipulated in the within-mentioned agreement of the 17th instant, at the same time declaring that the conditions and stipulations entered into, and contained in both of these agreements, shall not in any other wise be affected or weakened by such decision and acknowledgment of my right as sole heiress. And for the purpose of carrying into full effect this promise and obligation, I furthermore bind and oblige myself, my heirs, administrators, or assigns, immediately on the receipt and delivery to me of the bonds to be mentioned presently, in the this 3rd article of the

present agreement, or in case of such decision not being obtained within twenty months from the delivery of the said documents, then, on the receipt of sixteen thousand one hundred dollars, with interest in ready money, as hereinafter mentioned, to sign and deliver unto the said Joseph Libby Folsom or his legal representatives, or any such person or persons as shall be legally authorized by him to that
234 effect, any document or documents to that effect that may be required of me, and for that purpose be laid before me by him or his agent. And I, the undersigned Joseph Libby Folsom, on the other hand, hereby bind and oblige myself, my heirs, executors, administrators, and assigns, that as soon as it shall be legally decided that Anna Maria Spark is the sole heiress to the whole inheritance and estate of the deceased William Alexander Leidesdorff, I shall, without any unnecessary delay, deliver or cause to be delivered unto her, heirs, executors, administrators, on her or their signing and delivering a proper and legal conveyance and transfer of the whole of the inheritance and estate left by the said William Alexander Leidesdorff, a bond or more bonds, duly executed and signed by me or by my representatives, and strengthened with the same surety as the bonds mentioned in article 2nd of this agreement, for the sum of $16,100, (say sixteen thousand one hundred dollars,) payable in twenty months from the day of the delivery of the documents
235 mentioned in articles 1st and 2nd of this agreement, with interest at the rate of six per cent. per annum from the said last-mentioned day of delivery.

In the unexpected case that the question whether the said Anna Maria Spark is or is not the sole heiress, should not be legally decided at the time when the bond or bonds for $16,100, are to be made payable as herein last mentioned, then, in that case, the said sum of sixteen thousand one hundred dollars, with interest at the rate of six per cent. per annum from the above-mentioned day of delivery, is to be paid by me, my heirs, executors, administrators, or assigns, on proper and legal demand being made by her or them, as soon as she, the said Anna Maria Spark, has been legally declared to be the sole heiress to the said inheritance and estate of William Alexander Leidesdorff, and on her or their declaring their willingness to sign and deliver proper deeds of transfer and conveyance thereof.

4th. I, the undersigned, Christian Muller, in behalf of my
236 ward, the said Frederika Cordelia Leidesdorff, hereby renounce in favour of Anna Maria Spark, as mother of the deceased William Alexander Leidesdorff, all rights, claims, or pretension to any larger share than one-fourth part in the inheritance and estate of the said deceased William Alexander Leidsdorff; and it is understood and agreed upon, between the undersigned, Anna Maria Spark, and the undersigned, Joseph Libby Folsom, that any amount or share of the inheritance or estate of the deceased William Alexander Leidesdorff that may accrue to the said Anna Maria Spark, in consequence of the renunciation on the part of Frederika Cordelia Leidesdorff, as herein just mentioned, shall be considered and treated in every respect as if it had been acquired by virtue of her rights as immediate heiress at law of the said William Alexander Leidesdorff.

5th. It is understood that the bond or bonds for $17,500, mentioned in the 2nd article of this agreement as payable in the island
237 of Saint Thomas, shall be issued in favour of the upper guardians of St. Thomas, in behalf of said minor, Frederika Cordelia Leidesdorff.

6th. I, the undersigned, Joseph Libby Folsom, bind myself and my legal representatives, to furnish security for the fulfilment of my engagements as specified in this contract, to the full and entire satisfaction of the undersigned, Christian Muller, or any such person or persons as may be duly authorized by him for that purpose, on the delivery of the document or documents in article 1st of this agreement.

In testimony whereof, I, the said Anna Maria Spark, not versed in the art of writing, have hereunto fixed the sign of the cross, with my seal; and I, the said Ludwig Heitmann, as well as the said Christian Muller, and the said Joseph Libby Folsom, have hereunto set our signatures and seals, in the Danish island St. Croix, West Indies, this 26th day of September, in the year of our Lord one thousand eight hundred and forty-nine.

(Signed) ANNA MARIA her × mark. SPARK. [SEAL.]

238 As curator, L. HEITMANN. [SEAL.]
C. MULLER. [SEAL.]
J. L. FOLSOM. [SEAL.]

Witnesses:
J. A. STAKEMANN.
H. GINDRUP.

At St. Croix, one of the Danish West India islands, on the 26th day of September, in the year of our Lord one thousand eight hundred and forty-nine, before me, Ole Stampe Foss, duly authorized judge, recorder and notary public, for the town and jurisdiction of St. Croix, Christiansted, in the absence of the ordinary judge, notary public, &c., Fritz William Didrichson, personally appeared Anna Maria Spark, with her duly appointed curator, L. Heitmann, who exhibited his appointment from government, dated 9th March, 1846; likewise appeared before me Christian Muller, of St. Thomas, who exhibited his appointment as guardian to the minor Frederika Cordelia Leidesdorff, dated 21st August, 1849, and the governor general's resolutions of this day, authorizing him to dispose of the
239 minor's property left in California, and Joseph Libby Folsom, captain in the army of the United States of North America, all to me known as the persons named in the foregoing instrument, and after subscribing their names thereto, in presence of me and witnesses, acknowledged the same as their free act and deed, executed for the purposes therein mentioned.

No stamp used to this document, being for the benefit of an inhab-

itant of St. Thomas, but for the safety sake executed in triplo, that either may be used as original.

[SEAL.] Witness, my hand and seal of office, dated as above.

(Signed) HESS.

Witnesses present:

K. KEGLIGEN.

I. W. HATCHETT.

Cost of notary attestation and witnesses, $11 60, (say eleven dollars, sixty cents.)

HESS.

240 I, Isaiah C. Whitmore, merchant of the city of New York, duly appointed as attorney and agent of Christian Muller, who was duly appointed by his excellency the governor general of the Danish West India Islands as guardian to the minor Frederika Cordelia Leidesdorff, daughter of the deceased Frederick Laurentious Leidesdorff, and his surviving widow, Henrietta Matilda Leidesdorff, born Boyle, and in accordance with the special authority in the said Christian Muller vested, and to me legally granted by his appointment to act in his stead and place, do hereby acknowledge and declare that I have received and accepted from the within-named Joseph Libby Folsom the proper bonds made by him, with good and undoubted sureties, as within mentioned, for the sum of seventeen thousand five hundred dollars, to the said Frederika Cordelia Leidesdorff, that is to say, to the upper guardians of St. Thomas, their successors or assigns, for the use of the said Frederika Cordelia Leidesdorff, with interest, as herein mentioned; and upon con-

241 sideration, and by virtue of the authority vested in me, have determined the same to be entirely satisfactory, and so far forth as the same shall be necessary to show full and ample performance on the part of the said Joseph Libby Folsom.

I do acknowledge and declare that in such respect the said Joseph Libby Folsom has fully and satisfactorily performed the within agreement on his part.

In witness whereof, I, the said Isaiah C. Whitmore, have hereunto [SEAL.] set my hand and seal this thirteenth day of November, in the year of our Lord one thousand eight hundred and forty-nine.

(Signed) I. C. WHITMORE.

Witnesses:

HENRY CHAUNCEY.

E. A. SUWERKROP.

JAMES P. TICKIOTT.

U. I. HOPPIN.

UNITED STATES OF AMERICA,

Southern District of New York, ss:

On this thirteenth day of November, one thousand eight

242 hundred and forty-nine, Isaiah C. Whitmore personally appeared before me and acknowledged that he had executed the within instrument, as the act and deed of Christian Muller, and of

the upper guardians of St Thomas, therein described, by virtue of a power of attorney duly executed by the said parties, bearing date the twenty-eighth day of September, in the year one thousand eight hundred and forty-nine; and at the same time appeared U. I. Hoppin, of the city of New York, to me known, who, being by me duly sworn, deposed and said that he knew the individual who made the said acknowledgment to be the same person who executed the said instrument, which is to me satisfactory evidence thereof.

[SEAL.] In witness whereof, I have set my hand and seal, at the city of New York.

SAM'L R. BETTS,
U. S. Judge.

243 *Reported conveyance by commissioners to execute decree and confirmation by the court.*

Whereas, by a decree rendered on the 31st day of December, A. D. 1852, in the United States district court for the northern district of the State of California, in the exercise of its circuit court jurisdiction in a cause wherein Joseph L. Folsom, of the city of San Francisco, in the said State, is plaintiff, and Anna Maria Spark and Anna Christiana Gindrup, of the island of Santa Cruz, in the Danish West Indies, and Frederika Cordelia Leidesdorff, of the island of St. Thomas, in the Danish West Indies, are defendants, it was ordered, adjudged, and decreed, by the said court that the said Joseph L. Folsom is entitled to a specific performance by Anna Maria Spark, one of said defendants, of the contract set forth in said complaint, as therein prayed for: And whereas the said court further ordered, adjudged, and decreed that the said Anna Maria Spark shall convey, as afterwards provided in said decree, to the said Joseph L. Folsom all her right, title, interest, and estate in and to all the effects, real and personal, in the State of California, belonging to the
244 estate of the late William Alexander Leidesdorff, at the time of his death, to which by the right of heirship she is entitled, in the manner in which she covenanted and agreed so to do by the contract set forth in the complaint:

And whereas it was further ordered, adjudged, and decreed that the said conveyance should be duly made by deed, duly executed and acknowledged, according to the laws of this State, in the manner and form proper to effectuate in law such conveyance of the right, title, interest, and estate of the said Anna Maria Spark, and that the said deed shall be made, executed, and acknowledged when the said Joseph L. Folsom shall have complied with his part of the contract, set forth in said complaint, by the payment of the sums of money secured by the bonds as therein specified, to the parties to whom said sums of money are due and payable, with interest on the respective principal sums named in said bonds, at the rate therein stipulated, until the
245 maturity of each, or when the said Folsom shall have made it appear to the satisfaction of the commissioners afterwards to be appointed by said decree, that the sums of money and interest are

deposited in the city of New York, subject to the order of the persons to whom they are respectively payable:

And whereas, by the said decree, Matthew Hall McAllister and Edward Norton, of the said city of San Francisco, were appointed by the said court its joint commissioners to make, execute, deliver, and acknowledge, in the manner above decreed, an instrument of conveyance whereby they shall convey all the right, title, interest, and estate of the said Anna Maria Spark, in and to the effects, both real and personal, or of whatever description, and wheresoever situated in the State of California, together with all rights and credits belonging to and constituting the succession of the said William Alexander Leidesdorff at the time of his death, and that such conveyance shall be made by said commissioners when the said Joseph L. Folsom shall have paid the sums of money secured by the aforesaid bonds,
246 with interest, as above decreed, or shall have made it appear to the satisfaction of the said commissioners that the said sums of money, and interest, are deposited in the city of New York, subject to the order of the parties to whom they are respectively due, or to become due: And whereas the said Joseph L. Folsom has made it appear to the satisfaction of us, the said Matthew Hall McAllister and Edward Norton, that the said sums of money and interest are deposited in the city of New York, payable to the order of the persons to whom the same are respectively due: Now, therefore, this indenture witnesseth: That we, the said Matthew Hall McAllister and Edward Norton, by virtue of the power conferred on us by the said decree, and acting under said authority and decree, have granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said Joseph L. Folsom all the right, title, interest, and estate of the said Anna Maria Spark in and
247 to the effects, both real and personal, or of whatsoever description, and wheresoever the same be situated, in the State of California, together with all rights and credits belonging to and constituting the succession of the said William Alexander Leidesdorff at the time of his death. To have and to hold unto him, the said Joseph L. Folsom, his heirs and assigns, forever, to and for his and their sole use, benefit, and behoof, and for none other.

In testimony whereof, the said Matthew Hall McAllister and Edward Norton, commissioners as aforesaid, have hereunto set their hands and affixed their seals this thirty-first day of December, anno Domini one thousand eight hundred and fifty-two.

(Signed) M. H. McALISTER. [SEAL.]
" EDWARD NORTON. [SEAL.]

JOSEPH L. FOLSOM
vs.
ANNA MARIA SPARKS and others. } In equity.

248 In the district court of the United States for the northern district of California.

Matthew Hall McAllister and Edward Norton, commissioners appointed under the decree of this court, under date of 31st December,

1852, having reported the within copy of an instrument executed and delivered by them to the plaintiff, Joseph L. Folsom, it is ordered that the action of the said commissions in the premises be, and the same is hereby, confirmed.

(Signed) OGDEN HOFFMAN, JR.,
U. S. Dist. Judge.

Draft of decree and agreement.

United States district court for the northern district of California, exercising the jurisdiction of a circuit court.

JOSEPH L. FOLSOM
vs.
ANNA MARIA SPARK, ANNA CHRISTIANA GINDRUPP, FREDERIKA CORDELIA LEIDESDORFF. } In equity.

249 By and with the consent of Joseph L. Folsom, the plaintiff in this cause, given by Archibald C. Peachy, esq'r., his attorney of record, thereto duly authorized, and by and with the consent of Anna Maria Spark, one of the defendants, given by Messrs. M. H. McAllister and Edward Norton, her attorneys of record, thereto duly authorized, who have also been substituted by deed, bearing date the day of December, 1852, and recorded in the office of the recorder of the county of San Francisco, in liber ——————; to all the power and authority conferred upon Thomas Butler King, esq'r., late of the city of San Francisco, by the said Anna Maria Spark, by a deed or letter of attorney made in the island of Santa Cruz, Danish West Indies, on the 16th April, A. D. 1851, which is recorded in the aforesaid office in "liber 1, Powers of Attorney," page 396 *et se.* the said Messrs. McAllister and Norton acting in the premises both as the attorneys of record of the said Anna Maria Spark and as the substitute of the said Thomas Butler King, to the powers conferred upon him by the said deed or letter of attorney, the consent of the said parties, by their attorneys, being in writing
250 and filed in this court, all of which being made duly to appear, this court doth order, adjudge, and decree as follows:

First. That Joseph L. Folsom, the plaintiff, is entitled to a specific performance by Anna Maria Spark, one of the defendants of the contract set forth in the complaint, and as prayed for.

Second. That the said Anna Maria Spark shall convey to the plaintiff, as hereinafter providing, all of her right, title, interest, and estate in and to all the effects, real and personal, in this State, belonging to the succession of the late William Alexander Leidesdorff, at the time of his death, to which, by virtue of her right of heirship, she is entitled, in the manner in which she covenanted and agreed so to do, by the contract set forth in the complaint.

Third. That the said conveyance shall be made by deed, duly executed and acknowledged, according to the laws of this State, in the manner and form proper to effectuate in law such conveyance of the right, title, interest, and estate of the said Anna Maria Spark,
51 and that the said deed shall be made, executed, and acknowl-

edged when the plaintiff shall have complied with his part of the contract set forth in his complaint, by the payment of the sums of money secured by bonds, as herein specified, to the parties to whom said sums of money are due and payable, with interest on the respective principal sums named in said bonds, at the rate therein stipulated, until the maturity of each, or when it shall be made to appear to the satisfaction of the commissioners hereinafter appointed that the said sums of money and interest are deposited in the city of New York, and subject to the order of the parties to whom the same are due or to become due.

Fourth. That the said Anna Maria Spark, being a resident of the island of Santa Cruz, in the Danish West Indies, and her person being out of the reach of the process of this court, it is further ordered, adjudged, and decreed that Messieurs M H. McAllister and Edward Norton be, and are hereby, appointed joint commissioners to make, execute, deliver, and acknowledge, in the manner above decreed,
252 in regard to said Anna Maria Spark, an instrument of conveyance whereby they shall convey to the said Joseph L. Folsom, all the right, title, interest, and estate of the said Anna Maria Spark, in and to the effects, both real and personal, or of whatsoever description, and wheresoever the same be situated, in the State of California, together with all rights and credits belonging to and constituting the succession of the said William Alexander Leidesdorff at the time of his death; and that such conveyance shall be made by the said commissioners when the plaintiff shall have paid the sums of money secured by the aforesaid bonds, with interest as above decreed, or shall have made it appear to the satisfaction of the said commissioners that the said sums of money and interest are deposited in the city of New York, subject to the order of the parties to whom they are respectively due, or to become due.

That the money paid by the plaintiff to the defendant Anna Christiana Gindruss, and the amount secured to be said to her by
253 bonds, as stated in the complaint, as well as money paid to the defendant Frederika Cordelia Leidesdorff, and the amount secured to be paid to her by bond as stated in the complaint, shall be deemed and considered as part of the consideration paid to the defendant Anna Maria Spark, according to the agreement in the said complaint set forth.

And the sums of money so secured to be paid the said Anna Maria Spark, Christiana Gindrup, and the said Frederika Cordelia Leidesdorff, shall be paid by the plaintiff according to the tenor and true meaning of said bonds with interest, to the maturity of each.

And the said Anna Maria Spark shall be forever debarred from all claims or demands upon the plaintiff for the sum of money so paid to the obligees in said bonds, and from claiming or demanding said sums from plaintiff, as part of the consideration money of the purchase of her rights, as heiress, remaining unpaid to her.

But nothing in this decree contained shall be deemed or taken to discharge said Joseph L. Folsom, or any other person or persons,
254 from his or their liability to pay any interest money that may have accrued on the said bond, executed for the benefit of said Frederika Cordelia Leidesdorff.

The costs of the parties to this action to be borne and discharged by each, respectively, without costs as against each other.

We, Archibald C. Peachy, attorney of record for the plaintiff, Joseph L. Folsom, and M. H. McAllister and Edward Norton, attorneys of record for the defendants, Anna Maria Spark and the substitutes of Thomas Butler King, as above recited, do certify that we have agreed, and do hereby agree, that a decree shall be entered in this cause, conformable in all respects to the foregoing draft of decree hereto annexed.

(Signed) ARCH'D C. PEACHY,
Attorney of Record for Plaintiff.

(Signed) M. H. McALLISTER,
Att'y of Record.

" EDWARD NORTON,
Att'y substituted by B. T. King.

255 United States district court for the northern district of California, exercising the jurisdiction of a circuit court.

JOSEPH L. FOLSOM
vs.
ANNA MARIA SPARK, ANNA CHRISTIANA GINDRUP, FREDERIKA CORDELIA LEIDESDORFF. } In equity.

By and with the consent of Joseph L. Folsom, the plaintiff in this cause, given by Archibald C. Peachy, his attorney of record, thereto duly authorized, and by and with the consent of Anna Maria Spark, one of the defendants, given by Messieurs M. H. McAllister and Edward Norton, her attorneys of record, thereto duly authorized, who have also been substituted by deed, bearing date the fifteenth day of December, 1852, and recorded in the office of the recorder of the county of San Francisco, in liber 2, Powers of Attorney, page 577 *et sequents*, to all the powers and authority conferred upon Thomas Butler King, esq'r., late of the city of San Francisco, by the said Anna
256 Maria Spark, by a deed or letter of attorney, made in the island of Santa Cruz, Danish West Indies, on the 16th April, A. D. 1851, which is recorded in the office aforesaid, in "liber 1, Powers of Attorney," pages 396 *et seq.*; the said Messrs. McAllister and Norton acting in the premises both as the attorneys of record of the said Anna Maria Spark and as the substitutes of the said Thomas Butler King, to the powers conferred upon him by the said deed or letter of attorney, the consent of the said parties, by their attorneys, being in writing, and filed in this court, all of which being made duly to appear, this court doth order, adjudge, and decree as follows:

First. That Joseph L. Folsom, the plaintiff, is entitled to a specific performance by Anna Maria Spark, one of the defendants, of the contract set forth in the complaint, and as prayed for.

Second. That the said Anna Maria Spark shall convey to the plaintiff, as hereinafter provided, all of her right, title, interest, and estate in and to all the effects, real and personal, in this State, belonging to the succession of the late William Alexander Leidesdorff
257 at the time of his death, to which, by virtue of her right of

heirship, she is entitled, in the manner in which she covenanted and agreed so to do by the contract set forth in this complaint.

Third. That the said conveyance shall be made by deed, duly executed and acknowledged according to the laws of this State, in the manner and form proper to effectuate in law such conveyance of the right, title, interest, and estate of the said Anna Maria Spark and that the said deed shall be made, executed, and acknowledged, when the plaintiff shall have complied with his part of the contract, set forth in his complaint, by the payment of the sums of money secured by bonds as therein specified to the parties whom said sums of money are due and payable, with interest on the respective principal sums named in said bonds at the rate therein stipulated, until the maturity of each, or when it shall be made to appear to the satisfaction of the commissioners, hereinafter appointed, that the said sums of money and interest are deposited in the city of New York, and subject
258 to the order of the parties to whom the same are due or to become due.

Fourth. That the said Anna Maria Spark being a resident of the island of Santa Cruz, in the Danish West Indies, and her person being out of the reach of the process of this court, it is further ordered, adjudged, and decreed that Messrs. M. H. McAllister and Edward Norton be, and are hereby, appointed joint commissioners to make, execute, deliver, and acknowledge, in the manner above decreed, in regard to said Anna Maria Spark, an instrument of conveyance, whereby they shall convey to the said Joseph L. Folsom all the right, title, interest, and estate of the said Anna Maria Spark in and to the effects, both real and personal, or of whatever description, and wheresoever the same be situated, in the State of California, together with all rights and credits belonging to and constituting the succession of the said William Alexander Leidesdorff at the time of his death, and that such conveyance shall be made by the said commissioners when the plaintiff shall have paid the sums of money secured by the aforesaid bonds, with interest as above decreed,
259 or shall have made it appear to the satisfaction of the said commissioners that the said sums of money and interest are deposited in the city of New York, subject to the order of the parties to whom they are respectively due or to become due.

That the money paid by the plaintiff to the defendant, Anna Christiana Gindrup, and the amount secured to be paid to her by bonds, as stated in the complaint, as well as the money paid to the defendant, Frederika Cordelia Leidesdorff, and the amount secured to be paid to her by bond, as stated in the complaint, shall be deemed and considered as part of the consideration paid to the defendant, Anna Maria Spark, according to her agreement in the said complaint set forth. And the sums of money so secured to be paid to the said Anna Maria Spark, Christiana Gindrup, and the said Frederika Cordelia Leidesdorff shall be paid by the plaintiff, according to the tenor and true meaning of said bonds, with interest to the maturity of each. And the said Anna Maria Spark shall be forever debarred from all claims or demands upon the plaintiff for the sums of
260 money so paid to the obligees in said bonds, and from claiming or demanding said sums from plaintiff, as part of the con-

sideration money of the purchase of her rights as heiress remaining unpaid to her.

But nothing in this decree contained shall be deemed or taken to discharge said Joseph L. Folsom, or any other person or persons, from his or their liability to pay any interest money that may have accrued on the said bond executed for the benefit of said Frederika Cordelia Leidesdorff.

The costs of the parties to this action to be borne and discharged by each respectively, without costs as against each other.

(Signed) OGDEN HOFFMAN, JR.,
U. S. Dist. Judge.

SAN FRANCISCO, *Dec.* 31, 1852.

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the foregoing pages of writing, numbered from one to thirty-
261 seven, inclusive, are true copies of their original on file and of record in my office.

In testimony whereof, I have hereunto set my hand and
[L. S.] affixed the seal of the said court this twenty-third day of June, A. D. 1854.

(S'g'd) JNO. A. MONROE, *Clerk*,
By ALEX. M. SCHELL, *Dep'ty.*

Filed in office June 27, 1854.

(S'g'd) GEO. FISHER, *Sec'y.*

Opinion of board of by Comm'r Thompson.

JOSEPH L. FOLSOM
vs.
THE UNITED STATES.

Claim for eight square leagues of land called Rio de los Americanos, in the county Sacramento.

The petitioner claims title to the premises by virtue of a legal conveyance from Anna Maria Spark, the mother of and heir-at-law of William Alexander Leidesdorff, dec'd, to whom it is alleged that the lands described in his petition were granted by Gov.
262 Manuel Micheltorena, by title bearing date October 8th, 1844.

The original grant is filed in the case, and its genuineness and authenticity established by the testimony.

The lands are described with sufficient certainty to enable the surveyor, by reference to the original petition and map contained in the espediente, to identify and locate the particular tract granted; and the proof shows a full compliance with the conditions of the grant. This evidence is clearly sufficient to establish the validity of the title as it existed in Leidesdorff at the time of his death, but a confirmation to the present claimant is resisted on the part of the United States, upon the ground that the heir of Leidesdorff, being a foreigner, could not, under the law of Mexico in force at the time of

his death, take by inheritance, and that the lands consequently escheated to the government, the original grantor.

It is shown by the evidence in this case that Wm. A.
263 Leidesdorff, the original grantee, was a native of the island of Santa Cruz, being a depending of the kingdom of Denmark, and was a naturalized citizen of the United States, and afterwards of the republic of Mexico.

He was the illegitimate son of Alexander Leidesdorff and Anna Maria Spark. His father died prior to the year 1846, leaving his mother, one brother, and two sisters surviving, being residents of the aforesaid island, and subjects of Denmark. Leidesdorff himself died in San Francisco, California, on the 18th of May, 1848, intestate, and without issue of any kind, having never been married.

It is admitted in the argument, and clearly established by the authorities cited, that Anna Maria Spark was the sole and universal heiress of her son, William A. Leidesdorff.—(Smith's Civil Law of Spain and Mexico, title VIII, of intestate successions, chap. 2, sec. 4, and chap. 4, sec. 1, part 6, tit. 13, law 8, Ibid., law 11, and laws 9 and 10 of Toro, in Novissima Recop., l. 1, c. X., tit. XX, 2 Tapias Febrero 81, 2d Febrero Mej. 67.)

264 By virtue of such heirship she became invested with all the interest of Leidesdorff in the lands claimed, provided that at the time of his death she was not precluded by a legal incapacity to inherit on account of alienage.

The evidence shows that all her right, title, and interest in the premises have been transferred by proper legal conveyances to the present claimant.

His right, therefore, to a confirmation depends solely on the existence of such legal incapacity in the heir of Leidesdorff, and the consequent escheat or reversion of the lands to the government.

This question has been argued with great research and ability by the counsel on both sides, in the elaborate briefs they have filed in the case, but we have not thought it necessary to follow them through their learned disquisitions on the nature and origin of *Droid it anbaine* in France, and the law of escheats as it exists in England,
265 and has been incorporated in the municipal codes of most, if not all, the States of the Union. A reference to the laws of Spain and Mexico bearing on the subject, and the application of well-settled principles of law, will, we think, be sufficient to settle the question so far as the action of this commission is concerned.

It is a principle generally admitted and fully sustained by authority that under the civil law, as well as the law of Spain and Mexico, the heir stands in the place of the person of whom he inherits, and, as a consequence to this proposition, succeeds to the whole estate without regard to its nature or character.

The distinction between real and personal property in the distinction of the estates of deceased persons recognized by old laws appears never to have obtained in Spain and Mexico; the general term "bienes," applied to such estates, clearly includes both descriptions of property known under their laws as moveable and immoveable goods. The

law cited on this point, therefore, must be considered as apply-
266 ing to the lands as well as to the personal estate of the dece-
dent.

The first of these laws to which we will refer, and which forms the basis of all the other authorities on the subject, is found in Partida 6th, title 3, law 3 and 4. Law 2 provides that a city or village, or corporation, or any man, whether he be father, son, or knight, whether he be sane or mad, mute or deaf, blind or prodigal of his estate, clergyman or layman or monk, and briefly we say that every one not prohibited by the laws, this our book, whether he be free or slave, may be instituted the heir of another. Law 4th of the same title enumerates those who are incapacitated from taking by inheritance, among whom foreigners are not included.

The omission of foreigners from the exception contained in law 4, to the general rule of inheritance established by law 2, is by every legitimate rule of construction equivalent to an express enactment in favor of their right to inherit. We accordingly find this right
267 distinctly recognized by all the elementary writers and commentators upon Spanish and Mexican law whose works have come under our observation. Escriche Vid. Heredero lays down the principle broadly in the following terms: "Every individual or body not comprehended in the exception established by law may be heir by testament, or heir by estate; every individual, whether man or woman, priest or layman, free or slave, father or son, of age or minor, sane or mad, mute, deaf, or blind, *native or foreigner*, any body or community, as a city, village, or corporation, an institution, the state or nation," citing the above law as authority.

Again, the same work, Vid. Estrangero, declares the foreigner, whether transient or denizen, can dispose freely of his goods, "*bienes*," whether by contract *inter vivos*, or by his last will, as well in favor of foreigners as natives; and if he shall die without a testament, the goods of his estate shall not be confiscated but shall be delivered to his legitimate heirs, although they may be foreigners, so that
268 there does not exist in Spain, the law which they call "Aubano ó Albinagro," which means the French *divie d'aubaine*, answering the English law of escheats. Numerous other authorities, both Spanish and Mexican, might be cited where the same doctrine is either distinctly affirmed or arises by necessary implication; it is, however, unnecessary to quote them at length, as the right of a foreigner to take by inheritance seems to be so clearly established by the law in Spain, and was adopted in Mexico when she declared her independence, as scarcely to admit of controversy. We shall therefore contend ourselves with reference to the following authorities: 2nd Febrero Mej., pp. 26, 124; 2nd Gala Mej., pp. 108, 109, 133; 2nd Alvarez Inst. de Indias, pp. 168, 182; 1 White's Recop., titles 3rd and 4th, pp. 98, 111; 1st Tapia; Febrero, pp. 267, 275, *et seq.*

The construction attempted to be given to law 6th, title 5, lib. 3 of the Novissima Recop., and law 7 of the same title and book, and others cited from the law of the Indias, in contravention of
269 this right, cannot, we think, be sustained in opposition to the overwhelming weight of authority in its favor, and we there-

fore adopt the construction given to these laws by Judge Martin in the case of Rogers *vs.* Philips, *et al.*, reported in 5th Martin's Louisiana Reports, page 700, in preference to that contended for by the agents of the government in the present case.

After a careful examination of the authorities cited, and the elaborate arguments of counsel filed in the case, we are brought to the following general conclusions: that the law of escheats, and the *droit d'adbaine* as they existed in England and France, were never recognized as forming part of the municipal law of Spain.

Second. That property reverted to the government, or to the treasury, only in case of total failure of heirs, or the existence of such only as were by the exceptions to the general law of succession excluded from the inheritance.

Third. That foreigners not being comprehended within the exceptions presumed, the legal capacity to inherit, and consequently
270 the property of a testator or intestate could not revert in derogation of the rights of the foreign heir.

Such being the law of Spain as adopted in Mexico at the time of her separation from the mother country, the question arises, whether that law has been so changed by subsequent Mexican legislation as to preclude the foreign heir of Leidesdorff from the succession to his estate. The affirmative of this proposition is urged on the part of the government, and the principal authority relied on to substantiate it is the decree of the Mexican government the 11th of March, 1842.

The object of this law was to encourage the immigration of foreigners into the republic by authorizing them to acquire and hold lands, mines, &c., within its limits. The first seven articles prescribed the manner and conditions on which real property might be acquired by them. The 8th article provides that if the foreign proprietor absent himself with his family for more than two years from the re-
271 public without permission from the government, or if the property pass by inheritance or other title to persons non-resident in the republic, he shall be compelled to settle it within two years. If this be not done, the sale shall be made by the public authority, and one-tenth of the proceeds shall go to the informer, and the remaining nine-tenths to the owner being the non-resident proprietor or heir.

The 9th article, which is chiefly relied on to sustain the views of the law agent, is as follows: These provisions do not embrace the departments on the frontier and bordering on other nations, in regard to which special laws of colonization will be enacted, without the power to foreigners ever to acquire property in them without the express license of the supreme government of the republic.

The 8th article is remarkable as recognizing the general right of non-resident heirs to succeed to the lands of resident proprietors, and so far sustains the views we have taken of the Mexican law of
272 succession in the former part of this opinion.

It is contended, however, that the article prohibits foreigners from acquiring landed property in the frontier departments by any title, without the express license of the government. California being a frontier department, it is hence argued that the heir of Leidesdorff

being a non-resident foreigner, could not succeed to his estate until that license was obtained.

We do not think this construction a legitimate one; the law was evidently intended to apply to original acquisitions of land by foreigners, either by grant from the government, or by purchase from individuals upon their first coming into the republic for the purpose of settlement, and cannot, without a forced implication, be considered as repeating or changing the general law of inheritance

The law agent, in his argument on this point, lays down the following propositions, in which we fully concur:

"The decree or edict of Santa Anna of the 16th (11th) of
273 March, 1842, is not only a positive enactment bearing directly on the question we are discussing, but is illustrative of the law as it previously existed. It is in its character an enabling statute; its object is to give rights, and not to take them away." He then goes on and reviews the edict of 1842, and argues from the terms of the first article, confirming the operation of the law to *foreigners residing in the republic*, that non-resident foreigners are incapable of taking by inheritance. In other words, he makes the provision of that article, confining the acquisition of lands in the republic to resident foreigners, take away the right of the foreign heir to inherit, conferred by general law; thus contradicting the position with which he commenced, and making the article repeal by implication enabling provision of the general law.

In another part of his argument, on the same point, he lays down the principle that nothing but an unequivocal enactment making the change will be sufficient to prove the law to be changed by it.

Applying the rule of construction to the 8th article, and assu-
274 ming that, exclusive of that clause, "a foreigner could not inherit," he draws the conclusion that his position in that respect was not changed by the enactment.

If the premises of the law agent were correct, the conclusion would necessarily follow. The fallacy of the argument consists in the assumption that under the general law a foreign heir was incapable of inheriting, or if he was capable, the first article of the decree took away or destroyed that capacity by implication. And then, applying a different rule of construction to the 8th article, in which his right to inherit is expressly recognized, he argues that the right thus impliedly taken away by the first article could not be restored by the 8th without an express enactment to that effect. The argument is clearly suicidal, and destroys itself. We have already seen that by the general law a foreigner possessed this right. Adopting, then, the law agent's own rule of construction, that the right cannot be
275 taken away without an express enactment, and applying it to the whole decree, it is clear that no such positive enactment is to be found in it; consequently, the right of the foreign heir to take would stand as if no such decree had been issued.

This construction would confine the operation of the decree, as before stated, to the original acquisition by foreigners upon their first coming to settle in the country, and would make no change in the canons of inheritance, which have been in force since the first organization of

the government. The right of a non-resident heir to the estate of his deceased ancestor was as full and complete as if the 8th article of the decree had been adopted. Its only effect is to impose certain terms and conditions on the enjoyment of the inheritance after the right to it has accrued.

The associate law agent, in his argument, admits in effect the general right of the foreign heir to inherit under the laws of Mexico, but couples with it the condition or qualification of residence within
276 the republic, or the license of the supreme government, as required by the 9th article of the decree of the 11th March, 1842.

The rules of construction as above stated, applied to this article, would, as in the case of the others referred to, confine its operation to the original acquisitions by foreigners of lands in Mexico, and it could not, consequently, operate so as to change the general laws of inheritance. But we have already shown, by one of the fundamental principles of the civil law and the law of Spain, as adopted in Mexico, that the heir was considered as standing in all respects in the same place of his ancestor; consequently, immediately on the death of the latter he became invested with all his rights in the inheritance. The government might by express enactment take away this right and pass a law of escheat, by which the estate would revert to the government, or they might impose conditions or qualifications upon its enjoyment.

The former, so far as we have been enabled to discover, they
277 have failed to do, leaving the rights of the foreign heir as they existed in the Spanish law. The latter was clearly the object of the 8th article of the decree of the 11th March, 1842.

The provision of that article, however, did not affect the original right of the heir to the inheritance; they were merely in the nature of conditions subsequent, coupled with the further enjoyment of the estate, and may be classed with the ordinary burdens imposed by government on the holders of property, either for the purposes of reversal or other considerations of public policy.

In this point of view, the laws imposing these conditions were political in their character, as such annulled by the conquest. These, together with all laws growing out of the political condition and circumstances of Mexico, were repealed by the conquest, leaving in force only such municipal laws of Mexico as were necessary for the protection of persons, and the possession, enjoyment, and transfer of property.

The authority to levy contributions, referred to, resulted as
278 an inherit right of the conqueror over the conquered, universally recognized by the laws of nations.

The doctrine that the act of conquest *ipso facto* annuls the political laws of the conquered country, is not only a well-settled principle of international law, but is clearly recognized by the Supreme Court of the United States in the case of John C. Frémont, where they say: "California was at that time in possession of the American forces, and held by the United States as a conquered country, subject to the authority of the American government. The Mexican municipal

laws which were then administered, were administered under the authority of the United States, and might be repealed or abrogated at their pleasure, and any Mexican law inconsistent with the rights of the United States, or its public policy, or with the rights of its citizens were annulled by the conquest.

The decree of the 11th March, 1842, was clearly a political law, founded on such considerations of public policy as bring it
279 clearly within the principle recognized by the law of nations above referred to and the decisions of the Supreme Court. As such it was, in our opinion, repealed or annulled by the conquest. It is contended, however, on the part of the United States, that if the conquest repealed the Mexican political law, then the conquest gave American political law to the country—that the law of escheats, being a political law founded on public policy, was therefore introduced by the conquest and governed Mexico at the death of Leidesdorff.

We do not very clearly understand what idea the counsel intend to convey by the term "American law." It is very clear that the common law never was in force in the United States.—(1st Tucker's Com., p. 9; 1st Kent's Com., p. 360.) The Supreme Court, in the case of Wheaton and Donaldson *vs.* Polus and Gregg, 8 Peters, 651, say: "It is clear that there can be no common law in the United States. The federal government is composed of twenty-four sovereign and
280 independent States, each of which may have its local usages, customs and common law. There is no principle which pervades the Union and has the authority of law that is not embodied in the Constitution and law of the Union.

The common law could only be made a part of our judicial system by legislative adoption. When, therefore, a common law right is asserted, we must look to the State in which the controversy originated. We accordingly find in all the cases by the counsel for the government the question turned upon the consideration of the local law of the State in which the controversy originated, or some special provision in a treaty with a foreign power. We have in vain looked for any provision in the Constitution and laws of the United States giving them in their federal capacity the right of escheat. Admitting, therefore, the position of the counsel, that the American political law (meaning thereby the laws of the United States) was introduced by the conquest, they must show that the right of escheat
281 formed a part of that law; having failed to do this, the conclusion which they draw from it falls to the ground.

The right of the mother of Leidesdorff to succeed to his estate must therefore be adjudicated according to the provisions of the general laws of succession in force in Mexico at the time of his death. These, as we have already seen, fully established her right to the inheritance. Our views of the Mexican laws, so far as they affect this question, are so fully and clearly expressed in the opinions of several Mexican jurists' quoted in the claimant's brief, that we prefer adopting them to adding any further of our own on the subject.

Exiracts from an opinion given by Señor Don Francisco De Olaguibel, one of the most eminent lawyers of Mexico:

"Parents, according to the Mexican laws, are forced and legitimate heirs of their sons who die without descendants, and it must be observed that this is to be understood not only in regard to the
282 natives of the country, but also to foreigners, because, in this particular, the laws of Mexico, like those of all other civilized countries, derive their origin from the laws of nations, (*el derecho de gentes*,) in which successions are founded, although in matters of form they are regulated by the municipal law Since this law of nations has remained in full force, (a salvo,) because there is no provision of the municipal law opposed to it, we hold as established this truth, that *the mother of A. B. has succeeded naturally and legitimately to his property;* and this is so, whilst at the same time the provisions of the decree of the 11th March, 1842, are in force, first, because this decree is not in derogation of the common law, (derecho comun.) Second, because it contains provisions of more public law, (derecho publico,) which are entirely confined to prescribing the mode and requirements according to which should be possessed, what is acquired by a title so just and so universally recognized as that of inheritance."—(Olaguibel's Consulta, p. 5.)

283 "As a consequence of this it should be remarked that the title of property (el titulo de propiedad) passed to the foreign heir without the permission of the government, and on this point it will be enough to say that the laws respecting acquisitions, or possessions by foreigners, in no respect alter the provisions in force respecting succession, or although it is certain that by the decree of the 11th March, 1842, the permission of the government was necessary to enable a stranger to pass even that which he should acquire by hereditary right, this not saying that while said permission remains ungranted, the heir has not acquired the title la propiedad, or the property in the good of his ancestor."—(Olaguibel's Consulta, p. 78.)

Extract from the Consulta of Señor La Don Bernardo Conto.

By the last named act (decree of 11th March, 1842) the power which was governing the republic made a new law on the subject, and it must have been in force in Upper California until the ex-
284 change of the ratifications of the treaty of peace of Guadalupe, (30th May, 1848,) by which that district was ceded to the United States. It is in force in Mexico at this time. By it foreigners are allowed to acquire property of every description, urban, rustic, and mining, under the following conditions:

1st. That they should reside personally in the country.

2nd. That the country property which they may acquire shall not exceed in each department two estates.

3rd. That in all disputes which may arise touching the same they shall not claim any right on account of their being foreigners, and shall subject themselves absolutely to the laws of the country.

"As in Mexico there never existed the *droit d'aubain*, (jus alcinati,) and to the foreigner who dies here his relations might succeed, in

whatever county they reside; it was foreseen that a case might arise
in which a person had legally acquired real property might leave
285 him, who, on account of their residing without the national territory, could not keep or continue to hold such property. To meet such a case it was ordained in the 8th article, not that absent heirs should lose such property, but that they should be obliged to sell it within two years, and if they failed to do so it was made the duty of the public authorities, the said term of two years having passed, to sell such property, and give one-tenth of its proceeds to the denouncer, depositing in a secure place the remaining nine-tenths, which should be at the disposition of the heirs residing abroad."

"Therefore this law did not establish means for confiscation or expropriation, by which the heirs would be despoiled of the value of succession, which they ought to receive, but simply a measure by which they were prevented from possessing that value in the substance of real property in the republic."

"The 9th article of the same law declared that the provisions of the law should apply to the departments bordering on foreign na-
286 tions, and that these, the special license of the supreme executive, was necessary to enable foreigners to acquire immoveable property. This prohibition is universal, and is not confined, like that in the colonization laws, to the subjects alone of the nation adjoining, but it is to be understood as applying to all persons who are foreigners; that no person not a Mexican can own landed property in the said departments unless he shall obtain the permission of the supreme executive thereto. But I should advert to the fact that one can be a Mexican by birth or by naturalization, and it follows that the foreigner who has become naturalized is not within the said prohibition, and without such permission may own real property in the said department the same as other Mexicans, and by the same means.

"Who shall succeed, if the naturalized foreigner, being the owner of property of that kind in the frontier departments, shall die without
leaving heirs in the country?
287 There will then take place what was provided for in the 8th article; the property will not be confiscated, for there can in no case occur under the Mexican law; but the heir will be obliged to sell it within two years, and if he fail to do so after the expiration of that time, the public authority will make sale of it, and divide the price between the denouncer and the heirs, in the proportion I have before indicated; according to the laws of the republic, the case, in my opinion, is not susceptible of any other solution. Respecting the first, A. B., as I am informed, being naturalized in the republic, might, according to the national laws, acquire in it every kind of real property, without exception. From the moment he was naturalized he became a Mexican, and ceased to be comprehended in the laws which treat of foreigners. It is true that the 13th article of the constitution of December, 1836, required marriage with a Mexican woman in addition to naturalization, but I have already said that that constitution
was destroyed in the month of October, 1841. After that time
288 then A. B., although unmarried, might, as a naturalized citizen, acquire landed property of every description, and with-

out the necessity of a special license from the government. "And what would become of this property after his death? For the Mexican nation to take it, while there existed on earth a single heir of A. B., was impossible. By our laws the treasury (el fisco) never inherits except where there is no person of the blood of the deceased who can inherit. It would then be thus: If there was no legal impediment which prevented the relatives of A. B. from continuing in the possession of such property, they would continue to possess it as if they were Mexicans." "But if there was such impediment as, for example, that which arose from residence out of the country, the inheritance would not become extinct for that reason; the relatives would always be heirs and would receive the value of the succession; but they would be obliged to sell all of it, which was real property, within the term of two years, counting from the day of the death of A.
289 B, and if they failed to do so the public authorities could sell it at auction, and reserving nine-tenths of the produce of the sale for the heirs, could give the other to the person who denounced the failure of the heirs. So that if California had remained in possession of Mexico, the mother of A. B. would have been under the necessity of selling by the 18th of the May, 1850, (supposing that he died on the same day of the same month in 1848,) all the landed property which she had inherited in that department, and which her son had acquired by the ordinary means known to the law.

Extracts from the opinion of Señor Licenciado Don Mariano Galvez.

"On this point the Mexican law is not ambiguous, the property of foreigners who die here goes to their heirs by will or ab intestato."

"In the consulta which I am applying, it seems to be considered unquestionable (as in fact it is) that foreigners inherit of foreigners. Thus, then, it is clear that foreigners resident without the
290 republic can acquire real estate by inheritance, that by this acquisition they are obliged to move to this country or to sell within two years, and that if they do neither one nor the other, the penalty, not the loss of the property, but a deduction of ten per cent. "If this is true with respect to the inheritance of foreigners who die in the republic, to whom their children, parents, and relatives succeed, with greater reason must it be so with respect to Mexicans. From such foreigners may inherit, for there is no law to prohibit it, and in the case presented A. B. was a naturalized Mexican. Several other points are raised by the council in the examination of this question, but as the view we have taken of it is, in our opinion, conclusive of the claimant's right to a confirmation, and we have been able to discover nothing in them to change this conclusion, we have not thought it necessary to discuss them. A decree will be entered in favor of the claimants.

Filed in office June 12, 1855.

GEO. FISHER, *Sec'y.*

291 Recorded in Record of Decisions, vol. 3rd, page 43.

GEO. FISHER, *Sec'y.*

Decree.

JOSEPH L. FOLSOM,
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid, and it is therefore decreed that the same be confirmed. The land of which confirmation is made is situated in the county of Sacramento, and is known by the name of "Rio de los Americanos," being the same which was granted to William A. Leidesdorff by Governor Micheltorena on the 8th day of October, 1844, and is bounded as follows, to wit: Beginning at an oak tree on the bank of the American river, marked as a boundary to the lands granted to John A Sutter,
292 and running thence south with the line of said Sutter two leagues; thence easterly, by lines parallel with the general direction of the said American river, and at the distance, as near as may be, of two leagues therefrom, four leagues, or so far as may be necessary to include in the tract the quantity of eight square leagues; thence northerly, by a line parallel to the one above described, to the American river; thence along the southern bank of said river, and binding thereon to the point of beginning. For a more particular description, reference to be had to the original grant and to the petition and map contained in the espediente.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office June 12, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Record of Decisions, vol. 3, page 54.

GEO. FISHER, *Sec'y.*

293 And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the clerk, one of which transcripts shall be filed with the clerk of the United States district court for the northern judicial district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing two hundred and six pages, num-
294 bered from 1 to 206, both inclusive, to contain a true, correct

and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 321 on the docket of the said board, wherein Joseph L. Folsom *et al.* are the claimants against the United States, for the place known by the name of "Rio de los Americanos."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this tenth day of December, A. D. 1855, and of the independence of the United States of America the eightieth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Endorsed: Filed December 24, 1855.

J. A. MUNROE, *Clerk.*

295 *Notice of appeal.*

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 31 *Dec.*, 1855

321. "Rio de los Americanos," Joseph L. Folsom *et al.* claimants.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 3rd day of December, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Endorsed: Filed Feb'y 1, 1856.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

296 *Substitution of executors for Folsom, dec'd.*

No. 359.

In the United States district court for the northern district of California.

THE UNITED STATES, appellants,
vs.
JOSEPH L. FOLSOM, appellee.
} Transcript No. 321.—Rio de los Americanos, in Sacramento co.

And now come the appellants, by the U. S. dist. att'y for the northern dist. of California, and, on the suggestion of the death of the appellee, J. L. Folsom, moves the court that H. Wager Halleck, Archibald C. Peachy, and P. Warren Van Winkle, executors of the last will and testament of Joseph L. Folsom, deceased, be made parties appellees in the above-entitled cause.

Endorsed: Filed Feb'ry 18, 1856.

JOHN A. MUNROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

297 *Petition.*

To the honorable district court of the United States in and for the northern district of California.

THE UNITED STATES, appellants, *vs.* JOSEPH L. FOLSOM, deceased, revived in the name of his executors, H. WAGER HALLECK, ARCHIBALD C. PEACHY, and P. WARREN VAN WINKLE.	No. 359. — "Rio de los Americanos."

The petition of the United States, by their attorney, represents, that this cause is on application for a review of the decision of the board of commissioners whereby the claim of the said appellees was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the 24th day of December, 1855; that a notice of appeal was filed on the 1st day of February, 1856, and that the land claimed lies in the said district.

That the said claim is invalid.

298 Wherefore appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully, &c.,

S. W. INGE,
U. S. Dist. Att'y.

Endorsed: Filed Feb'ry 18, 1856.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Answer.

No. 359.

In the United States district court for the northern district of California.

THE UNITED STATES, appellants, *vs.* J. L. FOLSOM, appellee.	Transcript No. 321.—"Rio de los Americanos," 8 leagues in Sacramento co.

H. Wager Halleck, Archibald C. Peachy, and P. Warren Van Winkle, executors of the last will and testament of Joseph L.

299 Folsom, deceased, appellees, appear by their attorneys and for answer to the petition of the United States filed herein, say:

That their title to the tract of land called "Rio de los Americanos," as set forth and described in the petition to the board of commissioners, and in the documentary and other evidence filed in this case, is a good and valid title. The land claimed is situate in the northern district of California, and within the jurisdiction of this court.

And they pray this honorable court to affirm the decision of the board of commissioners, and to decree their title to be valid.

HALLECK, PEACHY and BILLINGS,
Att'ys for appellees.

Endorsed: Filed Feb'ry 18, 1856.
JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

300 At a stated term of the district court of the United States of America for the northern district of California, held at the court room in the city of San Francisco, on Monday the 18th day of February, in the year of our Lord one thousand eight hundred and fifty-six.

Present: Hon'ble M. H. McAllister, circuit judge, the honorable Ogden Hoffman, district judge.

Order reviving suit in name of executors.

THE UNITED STATES, *vs.* J. L. FOLSOM. } No. 359.

The death of Joseph L. Folsom, the appellee, having been suggested on the record by the United States dist. att'y for the northern district of California, on motion of the said district attorney, it is ordered that Henry W. Halleck, Archibald C. Peachy, and Peter W. Van Winkle, the executors of the last will and testament of the said Joseph L. Folsom, deceased, be made, and they are hereby
301 made the parties appellees in the above-entitled cause.

OGDEN HOFFMAN,
U. S. Dist. Judge.
M. HALL McALLISTER,
Judge Circuit Court, U. S. dists. Cal'a.

Endorsed: Filed February 18th, 1857.
JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Opinion.

THE UNITED STATES *vs.* EX'RS of JOSEPH L. FOLSOM. }

The claim in this case was confirmed by the board. The authenticity of the grant to William A. Leidesdorff was not disputed, but a question was made whether the land had not escheated to the Mexican government on the death of Leidesdorff, without heirs who were Mexican citizens. This question appears to have been elaborately argued before the board, and was decided in favor of the claim-
302 ant, after a full examination of the Mexican law applicable

to the subject. The objection was not renewed in this court by the district attorney, but a brief has been filed by counsel employed to contest the claim in which the point is taken.

It is not disputed on this brief that by the general law of Mexico foreigners could inherit, and that the doctrine of escheat or the droit d'aubain was unknown to their jurisprudence. The objection is based upon the decree of March 11, 1842.

The construction and effect of this decree is as fully discussed in the very elaborate opinion delivered by Mr. Comm'r Thompson, that it is unnecessary for us to do more than to express our concurrence in the conclusions arrived at by the board. The only effect that decree could have had upon the rights of the heirs of Leidesdorff would have been to oblige them to sell the estate, as provided in section eight, within two years, and if they failed to do so the public authorities
303 might have made the sale, giving one-tenth of the proceeds to the denouncer, and the remaining nine-tenths to the non-resident heirs.

This provision of law is not only different from, but inconsistent with the idea that by Mexican law the land on the death of the owner, without Mexican heirs, escheated to the gov't.

We think that no reasonable doubt can be entertained that the land claimed in this case descended to the heirs of Leidesdorff, from whom the claimants derive title.

A decree of confirmation for the land as described in the grant, and delineated on the map, must therefore be entered.

Endorsed: Feb'ry 23, 1857.

304 *Stipulation.*

In the district court of the U. S., northern district of California.

THE UNITED STATES *vs.* J. L. FOLSOM *et al.* } D. C. 359.—L. C. 321.

In pursuance of a notice received from the Attorney General of the United States, under date of 2d March, 1857, it is hereby stipulated and agreed that no further appeal be taken on the part of the United States in this case, and that claimants have leave to proceed under the decree of the U. S. land commission heretofore rendered in their favor, as under final decree.

SAN FRANCISCO, *April* 29, 1857.

WM. BLANDING, *Dist. Att'y.*
HALLECK, PEACHY & BILLINGS,
Att'ys for Claimants.

Endorsed: Filed April 30th, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

305 *Order vacating appeal.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in

the city of San Francisco, on Thursday, the thirtieth day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Judge Ogden Hoffman, district judge.

THE UNITED STATES } D. C. 359.
v. }
J. L. FOLSOM *et al.* } L. C. 321.

The Attorney General of the United States having given notice that no further appeal will be prosecuted in this case on the part of the United States, and a stipulation to that effect having been entered into by the U. S. attorney, on motion of the district attorney it is ordered, adjudged, and decreed that the claimants have leave to proceed under the decree of the land commission heretofore rendered in their favor as under final decree.

OGDEN HOFFMAN,
U. S. Dis't Judge.

306 Endorsed: Filed April 30th, 1857.
JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Order to return survey.

In the U. S. district court for the northern district of California.

THE UNITED STATES } D. C. 359.
vs. }
THE EXECUTORS OF J. L. FOLSOM, dec'd. } L. C. 321.

Whereas by a decree of this court entered on the 30th day of April, 1857, it was adjudged, ordered, and decreed that the claimants in the above entitled cause have leave to proceed under the decree of the board of commissioners appointed under the act of the 3rd of March, 1851, for the purpose of ascertaining and settling private land claims in the State of California, heretofore rendered in their favor, as under a final decree, and it appearing to the satisfaction of the court
307 that John C. Hays, surveyor general of the United States for the State of California, did, by virtue of said decree, proceed to the survey and location of the lands thereby confirmed to the said claimants, which survey and location was approved and examined by the said surveyor general on the 29th of May, 1857, on motion of the appellees, by their attorneys, it is ordered that J. W. Mandeville, successor of said John C. Hays, and now U. S. surveyor general for the State of California, be, and is hereby, directed and required to return to this court the plat and certificate of said survey so made and approved by said Hays, in order that this court may proceed to ascertain the external lines of the land so confirmed to the said appellees, and enter a decree of final confirmation for the same.

OGDEN HOFFMAN,
Dis't Judge.

Endorsed: Filed May 31st, 1859.
W. H. CHEVERS, *Clerk.*

308 (Here follows plat, marked original, page 308.)

Boundary lines.

No.	Course.	Length.	No.	Course.	Length.
		Chs. lks.			*Chs. lks.*
1	S. 79¼ E.	16 50	28	S. 78½ E.	35 00
2	89	10 00	29	66½	26 50
3	N. 57½	13 00	30	54¾	18 50
4	34	15 00	31	77½	28 50
5	North.	11 40	32	N. 79½	70 00
6	N. 3 W.	9 00	33	65¾	44 00
7	15¼ E.	30 00	34	85½	9 00
8	27 W.	17 00	35	76¼	29 50
9	68	22 00	36	51	20 00
10	12 E.	20 00	37	63½	20 00
11	35½	18 50	38	21	42 00
12	57¼	26 50	39	12¾	40 00
13	S. 85	34 00	40	0½	85 00
14	N. 44½	62 00	41	3	26 00
15	25½	28 00	42	55¼	64 50
16	26 W.	31 00	43	62¾	42 00
17	23½ E	21 00	44	2¾	77 00
18	50¾	15 00	45	18½	25 00
19	36¼	14 00	46	85	22 00
20	84	9 00	47	43½	26 00
21	41¾	15 50	48	52	12 00
22	S 31	51 00	49	72	10 00
23	64¼	17 50	50	South.	420 75
24	N. 40¼	87 00	51	S. 29¼ W.	466 14
25	60¾	13 00	52	West.	252 80
26	73¼	31 00	53	S. 46 W.	452 87
27	73¼	12 00	54	North.	421 36

Explanatory remarks from the field-notes of the deputy surveyor.

Station at end of No. 26. "This station is three chains and sixty-eight links north of the post, set in running the range line in consequence of the then existing brush, and other impediments, near the range line."

Station at end of No. 40. "The bank has cut in by the wash of the river and mining operations about four and a half chains since the township line was established."

"The field-notes of the rancho "Rio de los Americanos," and from which this map has been made out, have been examined and approved, and are on file in this office.

Surveyor general's office, San Francisco, May 29, 1857.

(Signed) J. W. MANDEVILLE,
Surveyor General, California.

U. S. SURVEYOR GENERAL'S OFFICE.

I certify this to be a full true, and correct copy of the original on file in this office.

J. W. MANDEVILLE,
U. S. Surveyor General, California.

309 *Statement of sur. gen'l to accompany plat.*

THE UNITED STATES
vs.
THE EXECUTORS OF
J. L. FOLSOM, dec'd.
} D. C. 359.
L. C. 321.

Complying with the order of the U. S. district court for the northern district of California, filed May 21st, 1859, I herewith file a traced copy of the plat of the survey of the rancho "Rio de los Americanos," surveyed under instructions from my predecessor, John C. Hays, and approved by him under date of May 29th, 1857.

It is proper to state that the survey above referred to did not meet the approval of the department, and instructions from the surveyor General Land Office, dated Sept'r 17th, 1858, are now on file in this office for a resurvey of this rancho, which resurvey has not yet been executed.

J. W. MANDEVILLE,
U. S. Sur. Gen'l.

Hon. OGDEN HOFFMAN,
District Judge Northern District California.

Endorsed: filed June 6, 1859.

W. H. CHEVERS, *Clerk.*

310 *Exceptions to survey.*

U. S. district court.

THE UNITED STATES
v.
J. L. FOLSOM *et al.*
} No 359.—"Rio de los Americanos."

And now come the United States, by their attorney, P. Della Torre, and except to the survey of the land claimed in this case, known as the rancho "Rio de los Americanos," a plat of which survey was filed in the clerk's office of said court on the 6th day of June, 1859.

And for objection to the confirmation and approval of the said survey, the United States, by their said attorney, allege as follows:

1st That the said survey was not made in accordance with the decree of the board of U. S. land commissioners, which directed reference to be had for a more particular description of the land, "to the original grant, and to the petition and map contained in the espediente;" that the petition of Leidesdorff, the original grantee,
311 asks for a tract "bounded by the lands of Señor Sutter, *as shown by the annexed map* which he duly transmits. Said place is on the bank of the American river, and consists of four leagues in length towards the east, and two in breadth towards the south;" that the map or diseño accompanying said petition delineates no land petitioned for beyond a certain arroyo or creek, forming the eastern

boundary on said diseño, which certain creek the United States allege to be identical with the "Alder creek," laid down on the plat of said survey; that the original grant to Leidesdorff recites that he "has for his own personal benefit petitioned for eight square leagues on the bank of the river called that of Los Americanos, bounded by land granted to the colony of Mr. Sutter and by the ranges of hills on the east," which "ranges of hills" called for in the grant begin on Alder creek, near its confluence with the American river, and, leaving Alder creek to the north, run southwardly beyond the reach of vision towards the Cosumnes river, and are well defined
312 and unmistakeable in their character; and that in direct opposition to the calls of the grant and the delineation of the land on the diseño, the said survey has been extended a great distance to the north of Alder creek, including within its lines a large extent of public land.

2nd. That the said survey has been disapproved by the Department of the Interior, and that instructions have been issued from the General Land Office, dated Sept. 17, 1858, for a resurvey of the said rancho by the present surveyor general of the U. S. for California, in accordance with the calls of the grant and diseño, and that said instructions have been received by the said surveyor general for California, and are now on file in his office.

Wherefore the United States, by their attorney aforesaid, pray that the survey, a plat of which is now on file in this court, be rejected as erroneous, and that the surveyor general of the U. S. for California be ordered to make a new survey according to the instructions
313 received by him from the General Land Office, dated Sept. 17, 1858, and return a plat of the same, when made, to this court for its approval.

San Francisco, July 20, 1859.

TULLY R. WISE,
Acting U. S. Att'y.

Endorsed: Rec'd copy within this twentieth day of July, A. D. 1859.

THOMPSON, IRVING & PATE.

Filed July 21st, 1859.

W. H. CHEVERS, *Clerk.*

Dep. of John Bidwell, U. S. witness.

United States district court northern district of California.

THE UNITED STATES
vs.
J. L. FOLSOM *et al.*

SAN FRANCISCO, *Aug.* 30, 1859.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John Bidwell, a witness
314 produced on behalf of the United States, in case No 359, being

an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 321 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: T. R. Wise, acting U. S. att'y, by J. B. Williams; R. A. Thompson, esq., for claimants, and A. P. Catlin, esq.

Questions by United States att'y.

Ques. 1. Your name, age, and place of residence?

Ans. 1. John Bidwell; I am 40 years of age; I reside in Chico, Butte co., State of California.

Ques. 2 How long have you lived in California?

Ans. 2. Since the year 1841.

Ques. 3. Do you know the rancho Rio de Los Americanos,
315 granted to Leidesdorff, and claimed in this case?

Ans. 3. I do.

Ques. 4. Were you ever on that rancho with intention of examining its boundaries? if so, state when, with whom, and what was the extent of your observation in regard to those boundaries.

Ans. 4. I was on the rancho for that purpose, I think it was in the spring or summer of 1844, with a man named John Sinclair, who was requested by Mr. Nathan Spear to examine the land for the purpose of making, or having made, a plot of it preparatory to asking for a grant. We examined the land from Sutter's eastern boundary up the American river, and the first part of our examination was along the bottom land on the banks of the American river; as we continued in an easterly direction we receded from the river, making a general examination of the ground as well as we could. I remember that we arrived at a steep gulch, and we came to the con-
316 clusion that we had seen all the land that was worth seeing, and turned around and went back again. This was done at the request of Mr. Spear, and I understood that Mr. Spear was about to take the necessary steps to obtain a grant of land there.

Ques. 5. What was the extent of this tract of land, and what was the shape of it?

(This and preceding question and answer objected to by att'y for cl'm't on the ground of irrelevancy.)

Answer 5. I do not remember that I learned the extent or shape of the tract of land at the time that I went up there.

Ques. 6. Did you learn the extent or shape at any subsequent time?

Ans. 6. I don't remember the time, whether it was at that time or subsequently, that there were 8 leagues in the tract, that it was 4 leagues long by 2 leagues wide.

317 (Ans. objected to as hearsay testimony, and as tending to prove the boundaries of the grant by oral testimony.)

Ques. 7. Do you know whether the tract of land that you examined at that time was subsequently granted to Leidesdorff or not?

Ans. 7. It was the same tract that was granted to Leidesdorff subsequently.

Ques. 8. Please examine map marked Exhibit No. 1, and state of what it purports to be a copy, when and by whom the original was made, and whether this appears to be a true copy of the original.

Ans. 8. It purports to be a copy of a map that I made for Gov'r Micheltorena, in 1844. As far as I can see, it is a generally correct copy.

Ques. 9. Please look at the outlines of the Rancho de Leidesdorff as laid down in that exhibit, and state upon what information you delineated the boundaries as they are there laid down.

Ans. 9. I cannot remember any particular source of information other than the examination made by me with Mr. Sin-
318 clair—the same one that I have spoken of, and the general information which I had of the location of ranchos which I had at that time—as they were then understood by persons living in the country at the time.

Ques. 10. Did Mr. Leidesdorff or any other person except to the boundaries of that ranch as laid down by you?

(Att'y for cl'm'ts objects to the question as leading.)

Ans. 10. I don't know that he did. I don't know that Leidesdorff ever saw it, or knew who made it. I made it in Monterey, and left it with Jimeno, sec'y of state.

Ques 11. Please look at the copy of the original diseño in the transcript in this case, and state whether it is a correct delineation of the land you examined.

(Att'y for cl'm'ts objects to any evidence in relation to this
319 copy, unless the non-production of the original is accounted for, and also because the copy is not a true copy of the original.)

Ans. 11. I cannot say whether it is perfectly correct or not, but I think it is sufficiently so to give a general idea of the location of the Leidesdorff ranch.

Ques. 12. Please examine the copy of the survey filed in this case by the surveyor general, and state whether the outlines of the survey agree with the outlines as generally understood at the time Exhibit No. 1 was made.

Ans. 12. They do not agree, and the river does not agree either; in our original map the river was made to run more directly east and west than in the survey.

The map I made was intended to give a general idea, not the precise direction of streams.

Ques. 13. Please examine the plat of the survey, and point out the location and direction in which the foot hills run from the American river.

320 Ans. 13. I never have examined the foothills with sufficient accuracy to point them out.

Ques. 14. When you made your examination of the land, did you consider the deep gulch spoken of as forming the eastern boundary?

(Question objected to as leading.)

Ans. 14. I do not know.

Ques. 15. Do you recollect whether the low hills commenced at that gulch or in the neighborhood?

Ans. 15. There were hills there. It was set in quite hilly.
Ques. 16. Do you recollect their general direction?
Ans. 16. I do not.

Cross-examination.

Ques. 1. Was the examination that you made with Mr. Sinclair before or after Leidesdorff's petition for the land?
321 Ans. 1. It was before.
Ques. 2. From what point did you and Mr. Sinclair start to make the examination?
Ans. 2. We approached the land on the south side of the river and examined the northern and western part first.
Ques. 3. What course did you take when you receded from the river?
Ans. 3. An easterly course; but we did not continue in a straight line, but made deviations so as to examine the land.
Ques. 4. How far were you from the river when you struck the gulch?
Ans. 4. We might have been one, two, or three miles.
Ques. 5. About how far was the gulch from the western boundary of the tract?
Ans. 5. I think it must have been ten or twelve miles.
322 Ques. 6. How do you distinguish the bottom lands from the others?
Ans. 6. The lands which are not bottom lands rise a little, becoming a little more elevated; the color becomes a reddish or yellow color; they are generally gravelly and barren.
Ques. 7. Did the tract which you examined embrace considerable of the upland?
Ans. 7. I considered the greater portion of it of that kind of land.
Ques. 8. Look at the map now shown you, purporting to be a certified copy of a map contained in an original document entitled "Espediente promovido por Don Guillermo Leidesdorff en pretencion del terreno conocido con el nombre del Rio de los Americanos," duly certified by the U. S surveyor general, marked Exhibit No. 2, C. McA., attached to this deposition, and state, from your examination of the country, whether the line separating the darker from the lighter shade is not intended to represent the line of separation between the
323 bottom lands and the more elevated ones of which you have spoken?
(Question objected to.)
Ans. 8. I think it was intended for that purpose, but it would make the tract of bottom land too large.
Ques. 9. Is not the general elevation of the country embraced within the dark shade of the map representing the high lands, about the same, as far as you went up on the occasion about which you have spoken?
Ans. 9. It is, as far as I remember. I do not remember particularly of any particular elevations.

Ques. 10. Do you remember whether at that time you passed over any dry watercourses or arroyos?

Ans. 10. I cannot remember distinctly; I presume we did—such things are so common in California.

Ques. 11. Have you at any other time since 1844 been over this ranch? And if so, state when and under what circumstances.

324 Ans. 11. I have often during 1844 and 1845 been over the lower part of this rancho, and I passed over a portion of this land in 1848—the back portion, I think—returning from Coloma.

Ques. 12. State what you mean by the back portion.

Ans. 12. I mean the part not on the river, south of the American river.

Ques. 13. State whether since 1848 you have been over the ranch; and if so, what portion of it.

Ans. 13. I have passed over the southwest portion of it. I was on other business, not to examine it. I was going and returning from Pratt's ranch, on the Cosumnes river. I have not been over it since then.

Ques. 14. State whether you ever saw that steep gulch since the time you saw it with Sinclair in 1844?

325 Ans. 14. I never saw it in that place since 1844. In returning from Coloma I must have passed it, but I think considerably higher up.

Ques. 15. When you came from Coloma, did you recognize that gulch?

Ans. 15. No; I was not thinking of it.

Ques. 16. From your knowlege of that section, could you tell where Alder creek, Willow creek, Cold Spring ravine, and Buffalo creek, as known at the present time, are?

Ans. 16. I could not; I have never been up there since those names were given.

Ques. 17. Have you examined the original diseño in this case?

Ans. 17. I have.

Ques. 18. Do you know who made it?

Ans. 18. I do not know; I think Mr. Sinclair, but I do not know that he did.

Ques. 19. When you made the map of which Exhibit No. 1

326 is a copy, did you make it from actual surveys, or from your general knowledge of the country at the time?

Ans. 19. From my general knowledge of the country at the time.

Ques. 20. When you made the examination with Mr. Sinclair, were you under the impression that the American river ran east and west along the northern side of the tract of land?

Ans. 20. I paid but little attention to the course of the river, but my impression was that it was nearly east and west. We had not compass with us.

Ques. 21st. In locating a ranch bounded on one side by a watercourse calling for so many leagues in length and so many in width, would you, in locating the back line from the river, adapt it to the sinuosities of the river, where such sinuosities were very marked, or would you run a straight line for the back line?

327 Ans. 21. I could not tell; that is a point upon which surveyors differ themselves.

Ques. 22. Where the river made a large bend, could you get the required width without varying the back line so as to make it correspond with the course of the river, being the boundary?

Ans. 22. That would depend upon the particular locality.

Ques. 23. Look at the map, Exhibit No. 1, and state whether in the ranchos delineated on that map you did not adopt the back lines to the course of the river so as to get the required length and width?

Ans. 23. I did so in a number of cases.

J. BIDWELL.

Subscribed and sworn to before me this 30th Aug., 1859.

CUTLER McALLISTER,
U. S. Com'r.

(Here follow 2 diseños attached to Bidwell's deposition, marked original, pages 329 and 330.)

328 Nostros los infrescritos por estas presentes certificamos que el presente plano es una copia del plano que servia de use y referencia al Señor Dn. Manuel Micheltorena, gobernardo del departmento de los Californias durante su administracion del gobierno de dicho departamento.

PABLO DE LA GUERRA. [RUBRIC.]

JOSE ABREGO.

Certifico que este mapa es igual a otro que de presente al gobierno en tiempo del General Micheltorena cuando yo estaba encargado de su secretaria.

Monterey, Marzo 26 de 1851.

MAN'L JIMENO. [RUBRIC.]

OFFICE OF U. S. SUR. GEN'L FOR CAL.

I, J. W. Mandeville, U. S. sur. gen'l for California, and, as such, having in my possession the papers of the late board of U. S. land commissioners, do hereby certify this to be a correct copy of a map, as the same remains on file in my office, in case No. 147 on the docket of said board of land commissioners.

Given under my hand and official seal this 5th day of November, A. D. 1857.

[SEAL.] J. W. MANDEVILLE,
U. S. Sur. Gen'l, Cal'a.

333 *Dep. of Geo. H. Goddard, U. S. witness.*

UNITED STATES DISTRICT COURT,
Northern District of California:

THE UNITED STATES
vs.
J. L. FOLSOM *et al.*

SAN FRANCISCO, *Aug.* 31, 1859.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized

to administer oaths, &c., &c., came Geo. H. Goddard, a witness produced on behalf of the U. S. in case No. 359, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 321 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: Tully R. Wise, esq., acting U. S. att'y, by Jno. B. Williams, for the U. S.; R. Aug. Thompson, esq., and A. P. Catlin, for claimants.

Questions by U. S. att'y.

334 Q. 1. Please state your name, residence, and profession.

A. Geo. H. Goddard; Sacramento; civil engineer and surveyor.

Q. 2. Do you know the ranch claimed in this case?

A. I do.

Q. 3. Have you recently made a topographical survey of the land within the lines laid down on the plat of the official survey?

A. Of a portion, a topographical sketch.

Q. 4. Will you please produce that sketch, in order that it may be attached to this deposition?

A. I was employed by certain parties to make it, and until it is paid for I consider it as my property. They appear to be unwilling either to pay for it or to make an arrangement to pay for it. For these reasons I decline to produce the sketch.

Q. 5. Who employed you to make the sketch?

335 A. Mess. W. Myers, Anderson, Piper, and another in the firm, who are quarrying granite; Judge Taft also, and Kincaid.

Q. 6. Which of these gentlemen contracted with you directly to make the sketch?

A. Mr. Anderson; Mr. Myers stated that Anderson was acting for a company of settlers who wished to have a survey made. I stated it would cost about $200; they told me that there was only $100 subscribed. I asked whether they wished a map made at that cost, $100, or not. In answer, they asked me what I would do it at by the day; I said $15. I said that if they wished the cost of the map limited to $100, there must not be more than from 3 to 4 days of field-work, the office-work requiring the remainder of the cost. There was nothing said about limiting. A day or two afterwards Mr. Kincaid came and said he would like me to go out on a certain day, naming it. I said I would require $50 to be paid down, and the remainder on the completion of the map. Mr. Kincaid said he would

336 report to them and let me know. A day or two subsequently I rec'd a letter from Mr. Myers, stating that Mr. Anderson would be down to see me and make arrangements for the survey. Mr. Anderson accordingly came and paid me $50 on account, and appointed the day on which I was to go up and commence the work.

(All the above statement, after the words "Mr. Anderson," objected to on the part of the U. S. as not responsive to the question, being a volunteer statement of the witness.)

Q. 7. At how much did you contract to make the sketch for with Mr. Anderson?

A. At $15 per day; he said he would prefer that mode.

Q. 8. How much did it amount to?

A. 12½ days.

Q. 9. How much did you receive on account?

337 A. $50 from Mr. Anderson, $25 from Mr. Myers.

Q. 10. Since the receipt of $75 have you been tendered at Sacramento any amount, and how much?

A. There was an offer to pay me $25 if I would give up the map; and I think I understood at that time they would give $50 more, when they could raise nothing in any tangible shape.

Q. 11. Were you employed to make this sketch for the purpose of exhibiting it in this case to show the topography of the land within the lines of the plat of the official survey?

A. I did not know until the sketch was half completed that I should be subpœnaed as a witness. I understood from the parties themselves that the map was to be used for that purpose by them.

Q. 12. I understand you, then, to decline the production of the sketch, considering it as private property.

A. I do, until I am paid, or a proper arrangement is made for the future payment.

338 (The attorney for the U. S. declines to ask the witness any more questions without the production of the sketch.)

Cross-exam.

Q. 13. Are Mr. Myers and Mr. Anderson in attendance here?

A. They are.

Q. 14. Have you proposed to them any arrangement as to the future payment for the sketch; if so, what?

A. I proposed that they should pay me the $25, which they stated was all the cash they had on hand, and that Mr. Myers should give me the note of Durfee & Myers for the balance. Mr. Durfee is the partner of Mr. Myers.

Q. 15. Did they decline that?

A. I understood them as declining it. I don't recollect any particular reason for it; Mr. Myers said he would become responsible for $50 of it.

339 Q. 16. Are you an officer of the State?

A. I am locating agent for the location of school lands, Marysville district. My office is in Sacramento.

Direct.

Q. 17. Have you not understood from Mr. Anderson that the objection to paying you any more than $100 was, that he and his associates understood at the time of making the contract that $100, and no more, was to be paid you?

A. I have.

Cross-ex.

Q. 18. Was that your understanding?
A. Certainly not.

GEORGE H. GODDARD.

Subscribed and sworn to before me this 31st day of August, A. D. 1859.

CUTLER McALLISTER,
U. S. Com'r.

Endorsed: Filed Sept. 1, 1859.

W. H. CHEVERS, *Clerk.*

340 *Dep. of Isaac Howell, U. S. witness.*

UNITED STATES DISTRICT COURT,
Northern District of California:

THE UNITED STATES }
vs.
J. L. FOLSOM *et al.* }

SAN FRANCISCO, *Aug.* 31, 1859.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Isaac Howell, a witness produced on behalf of the United States in case No. 359, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 321 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

Present: Tully R. Wise, esq., acting U. S. att'y, by Jno. B. Williams, for U. S.; R. Aug. Thompson, esq., and A. P. Catlin, esq., for claimants.

Sworn on his *voire dire*.

I reside in Napa county; lived on the Leidesdorff ranch in
341 1847—not since. I claim no land about Alder creek.

Questions by U. S. att'y.

Q. 1. Please state your name and residence.
A. Isaac Howell; Napa county.
Q. 2. How long have you lived in Cal'a?
A. I came in in 1846.
Q. 3. Did you ever reside on the Leidesdorff ranch?
A. I did; went on to it about the middle of January, and staid until about the 1st October, same year.
Q. 4. What was your employment or business on the ranch?
A. Taking care of cattle and raising stock.
Q. 5. By whom were you employed?
A. By an agent of Mr. Leidesdorff, named Sinclair.

Q. 6. Do you know of any survey having been made by
342 authority of Leidesdorff, or his agent, and by whom?
(Objected to by claimant.)

A. There was a survey made while I lived there by a man named Halls, who told me he was employed by Leidesdorff; he brought me a note from Leidesdorff, requesting me to board him.

Q. 7. Did you see any portion of the survey made?

A. I was present when some of the lines were run.

Q. 8. Please examine the certified copy of the plat of the survey by surveyor general of the U. S., filed in this case, and point out the starting point of the survey made by Mr. Halls?

A. He commenced at an oak tree about three-quarters of a mile below Leidesdorff's adobe house, which I have marked on the plat "H."

Q. 9. In what direction did he run his first line?

343 A. He ran his first line at right angles with the river in the direction indicated by the blue line on the plat.

Q. 10. Do you know how he run his next line?

A. I do not.

Q. 11. State what you know respecting the other lines run or corners established by him.

A. I saw no other lines run or corners established. Mr. Hall told me that he made a corner in an oak grove, which I never saw, but I presume I could easily have found it from his description, and from that description I judge it was where I mark the letter +C in blue; from this the third line, he said, run parallel, or nearly parallel, with the first line. He also told me he planted a stake near the bank of the American river. A few days afterwards I saw a stake, which I supposed to be the one mentioned by Mr. Halls. Its situation I mark on the plat, in blue, + +C.

344 (All the latter part of the above answer, embracing what was told the witness by Mr. Halls, objected to as hearsay. Objection sustained by commissioner. Excepted to by U. S.)

Q. 12. When you went upon the ranch, under whose orders did you act directly?

A. Mr. Sinclair's.

Q. 13. Did Mr. Sinclair point out to you the boundaries of the rnnch?

A. No, sir.

Q. 14. How did you know the extent of the land on which you were employed?

A. I knew nothing of the extent of the land; it was a wild country for 50 miles.

Q. 15. Does your last answer refer to the time before or after Mr. Halls's survey?

A. Both.

345 Q. 16. Describe the hills about Alder creek.

A. Above Mr. Hall's last line there are low hills running somewhat in the direction of the blue dotted lines on the map; beyond those, towards the corner, there was more table-land.

Q. 17. Do you know where Mr. Hall is now?

A. I think he is dead.

Q. 18. When you resided on the ranch, what did you consider as the general course of the American river?

A. I don't know. I always felt as if I was turned round there—never knew anything about courses.

Cross-exam.

Q. 19. Who else was present besides yourself and Mr. Halls when the first line was run?

346 A. Mr. Sinclair and Capt. Sutter were at the starting point, and two hands which he fetched with him to carry chain. Mr. Sinclair and Capt. Sutter left—the chain-bearers and myself went with him; myself not with him all the time, but was with him when the 2nd corner was made.

Q. 20. Do you know what the surveyor had to guide him in running those lines and making corners?

A. He had a plat with him; he showed it to me, or I saw it several times.

Q. 21. Was Mr. Leidesdorff present at any time during that survey, to your knowledge?

A. I know he was not.

Q. 22. Do you know whether Mr. Halls ever made a plat of his survey?

A. He only had the minutes; said he was going to make it in San Francisco.

Q. 23. Do you know whether Mr. Leidesdorff ever saw or approved of that survey?

347 A. Mr. Leidesdorff told me he had had it surveyed, and he settled with me for the surveyor's board. That is all I know.

Q. 24. In the progress of that survey, or at any other time, did you ever learn how far the tract extended up and down the river, and how far back from the river?

A. I do not recollect.

Q. 25. Is there more than one oak grove situated on the table-land where you state the surveyor made his second corner, or in that neighborhood?

A. I think there is one on each side of it not extending so far out.

Q. 26. What was the course run from the first corner made by Mr. Halls to the second?

A. I cannot tell.

Q. 27. As you never saw the second corner you speak of as being situated in the oak grove, and as you neither know the course

348 nor the distance from the 1st corner made by Mr. Halls to that point, how is it possible for you to identify the position of that corner on the map.

A. I don't pretend to identify it particularly any more than by hearsay.

Q. 28. Do you know whether Mr. Hall surveyed the river line?

A. He commenced at the starting point, went up the river, and was gone two days.

Q. 29. Did he take his chain-bearers with him?

A. He did; saw no one else with him.

Q. 30. How far is it from the adobe house to that oak grove where you say the second corner was placed?

A. I don't know that I can guess within a mile or two. Should think it was between four and five miles. I don't think I am three miles wrong.

349 Q. 31. What amount of land was included in Hall's survey?

A. I don't know. I might have heard at the time, but don't recollect now. Don't know now what the grant calls for.

Q. 32. How far from the corner in the oak grove was it to the foot-hills to the east?

A. I cannot tell. Should think it might be a mile or a mile and a half before you would get to them.

Q. 33. What direction are the foot-hills from that corner?

A. I cannot tell. I don't understand the courses, for reasons before given.

Q. 34. Going towards the Sierra Nevada, are those the first hills you come to?

A. They are, of any note; there was some rolling ground before you came to them.

Q. 35. Do you know whether the surveyor designed running the second line parallel with the river?

350 A. The surveyor told me that he wanted to run it parallel as near as he could.

Q. 36. Did you ever see any of his stakes along the river?

A. None but the two corners mentioned on the river. The stake marked as the end of the third line stood from three to five rods from the edge of the water.

Q. 37. Might not the last stake mentioned have been one of the stakes set by the surveyor in running the river line?

A. The way I found that stake was by following the trail across Alder creek through the bushes until I came to it. It might have been for all I know.

Q. 38. Did you, at that time, go any higher up the river than that stake; and if so, how far?

A. I did; what distance I don't know—perhaps a half mile

351 to three-quarters, to find a more open way to get out.

Q. 39. Do you know where Buffalo creek is?

A. I understood it was that Dry creek at about the end of the first line. I understood it to be called so at that time.

Q. 40. At the end of this third line you crossed a creek; what was that called at that time?

A. Alder creek; that was the only name I heard for it.

Q. 41. Are you certain that those places were known by those names at that time in 1847?

A. I never heard any other names?

Q. 42. Are you not mistaken about Buffalo creek being at the end of the first line?

A. I think not; some called it Dry creek and some Buffalo creek.

Q. 43. Did you know of any other Buffalo creek on that tract of land?

352 A. I did not.

Q. 44. Have you ever known any creek on the place known as Buffalo creek since?

A. No; I have never been there since, except to cross it twice.

Q. 45. When was the last time you crossed the place?

A. A year ago last May.

Q. 46. Who was with you; where were you going, and on what business?

A. Going to Folsom; no one with me in particular; business was to collect money.

Q. 47. You did not go up for the purpose of examining any of these lines?

A. No, not all.

Q 48. When was the other time you crossed the place?

A. In July, 1848, I think, I was going to Mormon island. I examined no lines then. My attention has never been called to
353 the lines or the land or the corners since 1847.

Q. 49. The 1st line was designed to run at right angles with the course of the river at the starting point, was it not?

A. I think it was nearly.

Q. 50. Was the adobe house you speak of the only one on the ranch?

A. There was an adobe granary standing 5 or 6 or 8 rods from it. These were the only adobe buildings on the ranch.

Q. 51. What was the course of the river for about a mile westward from the adobe house, or down the river?

A. It ran pretty near straight for two or three miles after it left the starting point down the river. The course I don't know.

Q. 52. How far from that starting point up the river did the river continue on this straight line?

A. Not to exceed 10 rods above the adobe house. The start-
354 ing point was about three-quarters of a mile below the adobe house.

Q. 53. I understand you to say you can't tell what course the river ran at the starting point, nor what course the first line ran, but you recollect that it was right angles with the river; is that so?

Answer. Nearly so, as near as I can recollect.

Q. 54. According to your best recollection, what was the distance between the stake on the bank of the river above Alder creek and the oak grove where you understood the second corner was?

A. I cannot tell the distance; it is only guesswork; in the neighborhood of three miles; may be more.

Q. 55. Was there not a creek running about midway through the ranch and emptying into the American river, about midway between the starting point and what you call Alder creek?

355 A. There were a number of creeks or rivulets running down into the American river in wet weather.

Q. 56. Do not those creeks and rivulets form dry ravines or gulches in the summer?

A. Small ones.

Q. 57. Do you remember one called Willow creek?

A. No, sir.

Q. 58. Did this creek which you speak of as being called Buffalo creek, and by some Dry creek, empty into the American river?

A. If it does I do not recollect where; don't know where it empties.

Q. 59. Was there a creek about in the middle of the tract which emptied into the American river, known as Buffalo creek?

A I don't know that there was.

Q. 60. None of these creeks of which you have spoken as
356 emptying into the American river were known by that name, were they?

A. None that I know of.

Q. 61. Was that state that stood near the bank of the river, at the end of the third line of Hall's survey, near the mouth of the first steep gulch up the river from the starting point?

A. I think there was one gulch before you come to it, but not so deep a one.

Q. 62. How far was this last named from the other?

A. I don't recollect.

Q. 63. How far was it from the starting point to that stake in a direct line?

A. I should think it was somewhere from four to six miles, but I may be out of the way considerably.

ISAAC HOWELL.

357 Sworn to and subscribed before me this 31st August, A. D. 1859.

CUTLER McALLISTER,
U. S. Com'r.

Endorsed: Filed Sept. 1, 1859.

W. H. CHEVERS, *Clerk.*

Opinion on motion to confirm survey.

THE UNITED STATES, appellants,
v.
THE EXECUTORS OF J. L. FOLSOM, deceased, claiming the rancho "Rio de los Americanos." } No. 359.—June term, 1859.

A decree having been entered at a former term confirming the claim in this case according to the boundaries mentioned in the grant, the appeal therefrom was, by consent of the district attorney, acting under the instructions of the Attorney General, dismissed. A motion is now made that the survey be brought into court to be examined
and passed upon, and that a final decree be entered con-
358 firming to the claimants the lands so surveyed. This motion is made that the court may exercise the jurisdiction which, by the recent decision of the Supreme Court, in the case of the United States *v.* Fossat, (21 Howard, p. 445,) it is supposed to possess.

As the same proceeding may be taken in the case of every claim confirmed by this court, and as the jurisdiction the court is invited to exercise is one it was not by any one suspected to possess until the

decision referred to appeared, an argument on the point was called for, in the hope that on a full discussion some of the difficulties and embarrassments which were felt on all sides to surround the subject might be removed.

It would be idle to conceal the fact that the questions presented, and the doubts raised by the recent decision of the Supreme Court, have been found by this court, and the counsel engaged in these cases, in the highest degree perplexing and embarrassing. No construction of the opinion of the Supreme Court was suggested by
359 which all the difficulties could be obviated or objections answered.

But as the latest decision of the Supreme Court on a class of cases to us in California of vital importance, it is the duty of this court to endeavor to ascertain its true interpretation, and the principles it establishes, and to adopt those principles in all cases to which they are applicable, without pretending to judge of their correctness, or to inquire, except in order to arrive at its meaning, how far previous decisions of the same court have been followed or overruled.

A brief statement of the case of the United States *v.* Fossat, as it was presented to the Supreme Court, is necessary to a correct understanding of its recent decision.

The original decree of this court cofirmed the claim to land within four external boundaries mentioned in the decree ; three only of these boundaries were designated in the grant, but it appeared to this court that the fourth or northern boundary, the existence and location of which was not disputed, was sufficiently indicated by the petition and the diseño to both of which the grant referred, as well as by
360 the name (Capitancillos) of the land granted. The land within these boundaries was found to exceed, by a fraction, the quantity of one square league ; but as that quantity was described in the grant as "one league of the larger size, a little more or less, as is explained by the map accompaning the espediente," and as the Supreme Court, in the case of The United States *v.* Sutherland, has declared "that in Mexican grants a square league seems to have been the only limit of estimating the superficies of land," and that "if more or less was intended in the grant it was carefully stated," it seems to this court that the whole land within the boundaries, and including an excess of a fractional part of the unit of measurement, might reasonably be considered as intended to be conveyed by a grant which described the quantity as "one league, a little more or less."

The Supreme Court, however, decided these views to be erroneous, and held that as only three boundaries were mentioned in the
361 grant, the fourth must be run for quantity, "which was the only criterion for determining that boundary furnished by the grant ;" that the words "more of less" must be disregarded, and the precise quantity of one league be considered to be clearly expressed ; that "if the limitation of the quantity had not been so explicitly declared," it might have been proper to ascertain the fourth boundary by referring to the petition, the diseño, and to evidence, to ascertain what land was included in and known by the name of Capitancillos,

but that no such reference or inquiries were admissible in that case, as the grant was free from ambiguity or uncertainty.

The Supreme Court accordingly affirmed the claim "for one league of land to be taken within the southern, western, and eastern boundaries designated in the grant, to be located at the election of the grantee, or his assigns, under the restrictions established for the location and survey of private land claims in California, by the executive department of the government."

It further ordered that the "external boundaries designated
362 in the grant may be declared by the district court from the evidence on file, and such other evidence as may be produced before it."—(20 How., p. 427.)

The duty thus imposed upon it this court thereupon proceeded to discharge. It was not suspected by the court, or suggested by any of the counsel, that that duty extended further than to "declare the three external boundaries mentioned in the grant," *i. e.*, to designate them, unmistakeably, in its decree, and to decide the vexed and only disputed question in the case, viz: whether the southern boundary was the ridge known as the Comas Bajas, or the sierra behind it.

The fourth boundary was, by the decision of the Supreme Court, to be determined by quantity alone; nor was this court required to declare it, for it was directed to declare only "the external boundaries designated in the grant, within which the land confirmed was to be located at the election of the grantee or his assigns, under the restrictions established by the executive department of the government."

363 A decree was accordingly made by this court, in which the three external boundaries mentioned in the grant were "declared" and described with as much precision as was possible without a survey; and the only disputed question in the cause, as to what was the southern boundary, (viz: the lomas bajas or the main sierra,) was elaborately discussed and decided

An appeal from this decree having been taken to the Supreme Court, it was dismissed as "improvidently taken and allowed." In its opinion, the court considers at large the nature and extent of the jurisdiction conferred on the district court by the act of March 3, 1851, and it decides that it possesses the power to enquire into and decide all questions of extent, locality, quantity, boundary, and legal operation which may arise in the cause. It further decides that, as under the acts of 1824 and 1828, it was the duty of the surveyor to fulfill the decree of the court, and the court had power to enforce the discharge of that duty; so, under the act of 1851, the duties of
364 the surveyor begin under the same conditions, and the power of the district court over the cause "does not terminate until the issue of the patent conformably to its decree."

It would seem that the right and the duty of the district court to control and correct surveys by the surveyor general in all cases could not be more explicitly declared.

But the Supreme Court goes further. The appeal was dismissed because this court had not entered a final decree. And this court is directed to "ascertain the external lines of the land confirmed, and to enter a final decree of confirmation of that land." This direction,

when taken in connection with the previous remarks of the court as to the power and duty of the district court with respect to surveys, and also with the fact that this court had already declared the boundaries with as much precision as was practicable without a survey, can only mean that it must direct a survey to be made, and that such survey, when approved, must be embodied in a final decree of
365 confirmation.

The decision of the Supreme Court is not based on the ground that this court had failed to execute any special mandate directed to it; for, as before stated, this court had been merely directed to declare "the external boundaries," not of the land confirmed, but "designated in the grant within which the land was to be located at the election of the grantee or his assigns, under the restrictions established by the executive department of this government."

As the three boundaries mentioned in the grant were not those of the land confirmed, but of the tract within which the one league confirmed was to be taken at the election of the grantee, subject to executive restrictions; and as this court was directed to declare only those three boundaries, it is clear that it performed all the duties enjoined by the Supreme Court, and that the case was not remanded because the court had failed fully to comply with the previous mandate of the Supreme Court. This fact is, by the Supreme Court itself, ad-
366 mitted in its recent decision. "The district court," it states, "in conformity with the directions of the decree, declared the external lines on three sides of the tract claimed, leaving the other line to be completed by a survey to be made."—(21 How., page 447.)

The defect in the decree of this court must have been other than a non-conformity with the mandate of the Supreme Court. I have been unable to give any other construction to the opinion referred to than that this court, after declaring the three boundaries within which the league confirmed was to be taken at the election of the grantee, and after the grantee had made his election, subject to executive restrictions, should have caused or permitted a survey to be made, and should have, by its final decree, confirmed the land so surveyed to the claimant.

Such being the clear purport of the decision with regard to the case before the court, we are next to inquire to what extent the principles laid down are to be applied to the other cases.

367 The view generally taken by the bar regards the decision as laying down new rules, by which all the land cases in California are to be governed; and the case is considered to decide that the decrees of this court, or of the Supreme Court, by which the authenticity and general boundaries of a grant are declared, are not "final decrees," but that the court is in all cases bound to direct a survey to be made, or to revise and pass upon surveys already made, and by its final decree to adopt a survey, and declare with precision the boundaries of the tract confirmed.

In support of this construction, reference is made to that portion of the opinion of the Supreme Court which decides that this court has, under the act of 1851, jurisdiction to determine all questions of extent, locality, and boundary, as fully as it was possessed by the courts under

the laws of 1824 and 1828; to the declaration that the decrees of this court, hitherto supposed to be "final," were not final decrees under the judiciary act of 1789, and that the Supreme Court has entertained appeals from them by "a relaxation of its rules,"
368 rendered proper by the "peculiar nature of these cases;" and to the order at the close of the opinion that the appeal be dismissed as improvidently allowed, and that this court "proceed to enter a 'final decree' of confirmation of the land confirmed."

If the language of the opinion of the Supreme Court be alone considered, it is perhaps not easy to avoid giving to it this construction. But the objections to it seem insurmountable. The 13th section of the act of 1851 prescribes the duties of the surveyor general with regard to private land claims in California. It is declared to be his duty to cause all private land claims in California which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same," &c. It is obvious, therefore, that the final decree of confirmation must precede the survey, for, until the claim is finally confirmed, the surveyor is not required or authorized to act.

Again: the 10th section provides that in cases of appeals
369 from the decisions of the board of commissioners the district court shall proceed to render judgment, etc, and shall, on application of the party against whom judgment is rendered, grant an appeal to the Supreme Court, etc.

The authority to entertain such appeals is not explicitly given to the Supreme Court, but it results, by necessary implication, from the provisions above cited, and from the allusion in the 15th section to the "final decrees rendered by the said commissioners, or by the district or Supreme Courts of the United States." Unless, then, the decrees of this court, which have been appealed from, were, in some sense, "final decrees," it is not easy to perceive how the Supreme Court, by any relaxation of its rules, or from considerations of convenience, could have had jurisdiction to review them on appeal.

The fact that the Supreme Court has heretofore entertained, and will hereafter entertain, appeals from such decrees, must, therefore, be taken as proof that they regard those judgments and decrees as "final," and appealable under the act of 1851; though it
370 appears that they are not final decrees under the judiciary act of 1789.

It is also evident that such decrees must be final decrees of confirmation, and the lands confirmed must be "finally confirmed," within the meaning of the 13th section, for otherwise the surveyor would have no authority, nor could he be required, under the provisions of that section, to survey them.

A contrary construction would lead to the most important and, perhaps, disastrous consequences.

It is well known that both the boards of commissioners as well as both the district courts of this State, in common with all the gentlemen of the bar, have hitherto regarded the decrees by which the authenticity and validity, and the general boundaries of a claim have been declared, as "final decrees" of confirmation, under which the survey was to be made and a patent issued. In no case has a survey

first been made and adopted or embodied in any subsequent final decree of confirmation.

371 In pursuance of such decrees, or similar ones, by the Supreme Court, many patents have issued.

If, then, it should be held that none of those decrees were final, and that the lands confirmed by them were not "finally confirmed" in the sense of the act of 1851, it might follow that the patents have been irregularly issued, and are void, as having been issued without authority of law.

There also may be cases in which no appeal has been taken from the decision of the board to the district court, or in which such appeals have been dismissed. If, then, the decisions of the board are not final decisions or decrees, it is difficult to perceive how final decrees in those cases can be made. For the board has ceased to exist, and the district court may never have acquired jurisdiction over the cause. I am persuaded that a construction of the opinion of the Supreme Court, involving such grave consequences, ought, if possible, to be rejected.

By referring to the cases cited by the Supreme Court in its opinion, (viz: those of Mitchell, 15 Pet., 52, and ex parte Sibbald, 12

372 Pet., 488,) as instances where the court directed, by its mandate, certain lands to be surveyed, and "maintained and declared the duty of the surveyors to fulfill the decree of the court," it will be found that the decrees of the Supreme Court requiring those duties to be performed are expressly called by the court itself its "final decrees."

In Mitchell's case the language of the court is: "On consideration whereof, this court is of opinion that the title of the petitioner, etc., is valid by the laws of nations, etc., and do finally order, decree, determine, and adjudge accordingly; and this court doth in like manner order, adjudge, determine, and decree, that the title of the petitioner is valid to so much of a certain other tract as shall not be included in an exception hereinafter made;" and it proceeds to give particular directions for ascertaining the land so excepted.

In Sibbald's case, after declaring the duty of the surveyor to fulfill the decree of the court, it orders "that the clerk of this court

373 make out a certificate of the final decree heretofore rendered in the case of the United States *vs.* Sibbald; and, also, a mandate according to such final decree, the opinion of the court in that case, and on these petitions."—(12 Pet., 495.)

It appears, therefore, that the decrees of the Supreme Court, by which the general validity of the claims in those cases was ascertained, and by which directions for a survey of certain tracts were given, were not only regarded by the court, but in terms declared to be final decrees; although some proceedings subsequent to, and in execution of, the mandates were required to be had by the inferior court and by the surveyor, the latter of whom, it may be remarked, was by the sixth section of the act of 1824 required to make a survey after a final decision in favor of a claimant.

That the decrees under which the surveyor, by the act of 1851, was required to survey, were not by the legislature intended to contain or embody a precise description of the land, as ascertained by a

374 previous survey, is further evident from the fact that the same section confers upon the surveyor general a certain provisional and quasi judicial authority to fix and settle disputed boundaries between adjoining ranchos.

But if the final decree of this court, under and in obedience to which he acts, has already fixed with precision every line of the claim which is confirmed, the surveyor can never exercise the authority which the law-makers have been at pains to confer.

It would seem clear that the statute contemplated that the claim might be finally confirmed, and the surveyor called upon to survey it under a decree affirming its validity, and fixing its general boundaries, or those of the tract out of which the quantity confirmed should be taken, thus leaving to the surveyor the opportunity to exercise the authority with respect to interfering claims or boundaries which the law-makers intrusted to him.

On the whole, I incline to the opinion that the decision of the Supreme Court ought not to be construed as determining that none
375 of the decrees heretofore rendered by the board, the district courts, and by itself, are final decrees; and that final decrees, defining with precision the boundaries of the land, must in all cases be entered.

I am aware that this view is apparently in conflict with some expressions in the opinion; but it has seemed less open to objections than the other construction suggested, to adopt which would involve, as consequences—

1. That no final decree has ever yet been made in any land case.

2. That the survey is to be made by the surveyor general of claims not finally confirmed, but which are finally confirmed only after survey, when the language of the statute is express that the claims to be surveyed by him are those which shall be finally confirmed.

3. It would leave the regularity and even the validity of all patents heretofore issued open to grave doubts.

4. It requires us to suppose that the Supreme Court have
376 treated as final, and therefore appealable, decrees which were not final, and this by a relaxation of their rules, which, as the law only gives to that court jurisdiction of appeals from final decrees, it cannot be supposed that they would have felt themselves at liberty to make.

Assuming, then, that the decrees of this court, heretofore rendered, are to be deemed "final," in such a sense as that an appeal from them can be taken, and that the surveyor general, under the thirteenth section of the act of 1851, may be required to survey them, we are next to inquire what further jurisdiction over the case this court is, by the opinion under examination, declared to possess.

That the case of Fossat was remanded in order that a survey might be made, and a decree embodying such approved survey entered, is clear.

It may be said, however, that such a proceeding is merely decided to be necessary in that particular case, and that it should not
377 be taken except in cases precisely similar to that of Fossat, viz: Where the question of boundary or location has been raised and

decided in the regular course of the suit, and where the Supreme Court has remanded the cause in order that the location might be fixed. But this interpretation of the opinion is inadmissible.

It has already been shown that this court had performed every duty required of it by the previous decision of the former court, and that the cause was not remanded because this court had failed to fulfill the previous mandate in the case.

That the Supreme Court have, in their opinion, laid down principles generally applicable to all cases, I think is evident. In the first place, they discuss and decide the point whether this court has, by the act of 1851, any authority to decide questions of extent, location, and boundary. Such questions they declare may be "essential in determining the validity of a claim," and the power to decide upon "validity" involves the power to decide upon all questions of boundary.

378 Secondly. In answer to the objections that this court has no means to ascertain the specific boundaries of a confirmed claim, and no power to enforce the execution of its decree, the Supreme Court decides that this court has such power, and that it is the duty of the surveyor to fulfill the decree of the court; and the court declares, "that the power of the district court over the cause does not terminate until the issue of a patent conformably to its decree."

I am aware that in a previous opinion delivered in the same case, (20, How., 425,) the same court declared that "the jurisdiction of the board of commissioners in the first instance, and the appellate jurisdiction of the courts of the United States, are limited to the making of decisions on the validity of the claim, preliminary to its location and survey by the surveyor general of California, acting under the laws of the United States."

No mode of reconciling this declaration with any construction of the last decision in the case of Fossat was suggested at the bar
379 or has occurred to either of the judges. It must, therefore, be treated as overruled by the later case.

As, then, "the power of this court over the cause does not terminate until the issue of a patent conformably to its decree;" and as it has jurisdiction to determine all questions of extent, location, and boundary which may arise, it is the duty of the court to exert this power, and to exercise the jurisdiction at the instance of a suitor.

I therefore think that in all cases where a decree of confirmation has been entered, and a survey under it has been made, on which a patent is about to issue, which survey is objected to as erroneous, it is the duty of the court to direct the survey to be returned to it, that it may hear and determine the questions of location and boundary which may be raised.

In coming to this conclusion, I have not overlooked the great difficulties of reducing it to practice.

The first and most perplexing question is that of parties. By whom can objections to a survey be made? Every party entitled
380 to object to the survey must have a right to take testimony in support of his objection, and a right to appeal from the decision of this court to the Supreme Court.

It is, therefore, of the utmost consequence to determine who are the rti es to the proceeding.

At first blush, the answer might seem obvious, viz: That the parties to a proceeding to correct a survey are only the original parties to the suit, viz: the United States and the claimant. But the solution of the difficulty is by no means so easy as it might appear. During the long period which has elapsed since the claims were first filed before the board, many changes of interest have occurred. Suppose, then, that the original claimant has parted with all his interest, or it has been sold on execution. He may have no motive to dispute any location, however erroneous; and he may not be disposed to allow the use of his name to the present owner. Cannot the latter be heard to object to the location of what has become his exclusive property?

381 Or suppose that the original claimant, though really entitled to only two leagues, to be taken from a tract the boundaries of which contain four leagues, has, through error or fraud, sold out four leagues to two purchasers—two leagues to each. He therefore has ceased to have any interest in the controversy. The real contest is between the purchasers, each of whom desires that the patent may cover the land conveyed to himself. Is neither to be heard? or only he who has the good fortune to obtain the use of the name of the original claimant? The United States may have no objection to the survey. It will, therefore, be confirmed, unless objected to on the part of the claimant. Which of the parties, in the case supposed, has the right to object? If both have, what limits can be assigned to the rights of intervention? for in some cases, the grantee may have sold to hundreds of purchasers. Again: If the right of both sub-grantees to be heard in the case supposed to be admitted, ought not persons so immediately interested in the result of the inquiry to be heard, notwithstanding that the original claimant may not have

382 sold out his entire interest? The part retained by him may be so situated that any possible location of the claim will include it. He has, therefore, no interest to object; on the contrary, he desires a patent to issue without delay. But the purchasers under him have a direct and vital interest in obtaining a location such as cover the tracts conveyed to them, respectively. Is the court to refuse to hear them?

Again: Grants, in most instances, have as one or more of their boundaries the lands of other parties. The court, in fixing the location of rancho "A," necessarily determines one of the boundaries of rancho "B," by which it is bounded.

Ought not the owner of the latter to be heard to show what his boundary is? If he is not, he is excluded on the ground that the suit as to the boundaries of his neighbor determines nothing as to his rights. The result might thus be, that when the second rancho is before the court for location, the evidence in that case would

383 compel it to adopt a boundary line different from that fixed in the first case.

If the second location were the correct one, the claimant in the first case would lose his land. It would then be too late to extend his

lines in another direction so as to give him the quantity mentioned in his grant.

But the boundaries of rancho "B," in the case supposed, may involve an inquiry into the true location and boundaries of rancho "C," and several other circumjacent tracts. How, then, can the court, hearing each case separately, unassisted by topographical maps, and unable, except in rare instances, to visit the lands, hope to arrive at any satisfactory conclusion?

Again: Two or more grants are often made within the same general boundaries—an original, or first grant, and one or more sobrante grants. Ought not both grantees to be heard, that the court may give, if possible, such a location to both as will satisfy the claims of each?

If all these parties have the right to appear, take testimony, and to appeal, it may reasonably be apprehended that the litigation
384 upon which we are entering will be far more protracted than that which has already occurred respecting the validity of the claims.

If these parties are excluded, how can justice be done? When we consider the immense interests involved in the location of grants, the vague and indeterminate character of the boundaries mentioned in the grants and delineated on the diseños, the opportunity afforded for plausible objections to any location which can be made, and how impracticable it is for a court to learn through depositions the natural features of a country it has never seen, and of which no topographical map is exhibited, and therefore how difficult it will be for it to render any decision in which the parties will acquiesce, or which will be satisfactory to itself, it may well be doubted whether the evident anticipation of the Supreme Court that few cases will reappear before it on appeal will be realized.

Before dismissing this subject, a further observation may be made. The settlers claiming to hold under the United States are
385 heard, if at all, through the district attorney. In many cases, they may have just objections to a location which has been made so as to improperly include their claims. In many cases they may object to any location in order that the issue of a patent may be postponed, and that they may continue to enjoy the use of the land.

The number of locations to be passed upon may be some hundreds. The district attorney, like the court, is unacquainted with the topography of the country. How can he determine, when objections supported by affidavits are presented to him, which he ought to urge in the name of the United States, and which he ought to refuse to make as vexatious and intended for delay? May he not be driven to adopt the rule to make objections which seem plausible, and are supported by an appearance of proofs? In such case it is to be feared that the jurisdiction the court is about to exercise may be as often the means of delaying indefinitely the issue of a patent to a rightful claimant, and of plunging him into a new and protracted litigation,
386 as of correcting errors of the surveyor general in locating claims.

For these reasons, I would gladly have declined the jurisdiction I

am urged to assume. For, notwithstanding the almost unanimous opinion of the bar to the contrary, it has appeared to me that the evil results of its exercise may outweigh the good.

Under the recent decision of the Supreme Court, I have not felt at liberty to do so.

With regard to the particular case more immediately under consideration, it follows, from what has been said, that this court cannot now proceed to examine the survey which has been made. The court, as already stated, regards the decree heretofore made as final, in a sense to authorize an appeal from it, or a survey of the lands as finally confirmed. It is not, however, exhaustive of its power over the case, for that does not terminate until the issue of a patent. The court does not, therefore, proceed as of course to enter a decree for
387 the land as surveyed, which would be necessary if the decree heretofore made were only interlocutory.

But it will hear objections to the survey. None are made in this case. The survey originally made is satisfactory to the parties now moving to bring it before the court. That survey has been disapproved at Washington by the executive officers of the government, and a new one directed to be made. When that shall have been done, the parties now moving may make their objections and bring the questions involved before the court.

Oct. 4, 1859.

Endorsed: Filed Oct. 4th, 1859.

W. H. CHEVERS, *Clerk.*

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389 *Order vacating order of May* 31, '59, *and dismissing proceedings thereunder.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Thursday, the 13th day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The Hon M. Hall McAllister, cir. judge; the honorable Ogden Hoffman, district judge.

THE UNITED STATES *v.* J. L. FOLSOM *et al.* } No. 359.--L. C. 321.--"Rio de los Americanos."

A motion having been heretofore made in this case by the U. S. attorney that the order of the court entered May 31, 1859, directing the return to the court by the U. S. surveyor general of the plat and certificate of the approved survey of the land claimed herein, known as the Rancho de los Americanos, be vacated and the proceedings thereunder dismissed, and counsel for the respective parties
390 having been heard, and due deliberation had, it is ordered that said motion be granted, and that all proceedings under said

order entered May 31, 1859, be dismissed. And it is further ordered that a certified copy of this order be served upon the U. S. surveyor general for his information.

Endorsed:

U. S. MARSHAL'S OFFICE,
San Francisco, Oct'r 14th, '59.

I hereby certify that I have this day made personal service of the within order on J. W. Mandeville, U. S. surveyor general.

P. L. SOLOMON,
U. S. Marshal.

Filed October 13, 1859.

W. H. CHEVERS, *Clerk.*

Order to return survey, &c.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Tuesday, the 22nd day of Novem-
391 ber, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
The HEIRS of J. L. FOLSOM. } D. C. No. 359.—L. C. No. 321.

It being suggested to the court that the survey of the land claimed in this case, made under final decree, and approved by the United States surveyor general, on application of Halleck, Peachy & Billings, attorneys for the claimant, it is ordered that the said surveyor general return to this court a certified copy of the plat of said approved survey, and that the claimant be allowed ten days, from and after the return thereof, to file exceptions thereto. And it is further ordered that a certified copy of this order be served upon the said surveyor general for his information.

Endorsed: Filed Nov. 22, 1859.

W. H. CHEVERS, *Clerk.*

(Here follows plat, marked original, page 392.)

392

393

394 *Claimants' exceptions to survey.*

In the district court of the United States, northern district of Cali for ni.

THE UNITED STATES
vs.
HALLECK, PEACHY, and VAN WINKLE, executors, &c., of JOSEPH L. FOLSOM, dec'd, and other purchasers from said claimants.

Now come the said Halleck, Peachy, and Van Winkle, executors, &c., and other purchasers from said claimants, by Halleck, Peachy and Billings, their attorneys, and except to the survey of the land claimed in this case made under the final decree, by the United States surveyor general for California, a certified copy of the plat whereof was filed in this court pursuant to its order on the day of , 18 , and for these exceptions the said claimants aver:

1st. That the said survey is erroneous, because it does not conform to the description of the land confirmed as contained in the decree of final confirmation.

395 2nd. The said survey is erroneous, because it does not conform to the petition of Wm. A. Leidesdorff, the original grantee, nor to the grant made to him.

3rd. The said survey is erroneous, because it does not comform to the description of the land given by the witnesses examined before the land commissioners.

4th. The said survey is erroneous, because the grant call for four leagues in length upon the American river, and two leagues in width from north to south, and the said survey gives the said tract less than two and one-half leagues in length on said river, and makes the same more than three leagues in width from north to south, thereby entirely changing the form of said tract from the form in which it was granted.

5th. The eastern boundary of said survey, being located below Alder creek, is erroneous, because the original petition, deseños, and grant locate the said eastern boundary above said Alder creek,

396 and because the United States, upon the trial of this case before the land commissioners, contended and introduced witnesses to prove that said eastern boundary was above said Alder creek, and because, in pursuance of said testimony, the said commissioners by their decree so described the boundaries of the land that the eastern boundary, by the said decree, is fixed above Alder creek.

6th. The said survey is erroneous, because it is made contrary to the rules of the department, on this, to wit: that it excludes a large portion of land purchased from the said claimants by third persons in good faith and upon the credit of a survey of said claim, made under and in pursuance of the final decree by the U. S. surveyor general for California, and approved by him and by the Commissioner of the General Land Office at Washington.

7th. That said survey is erroneous and ought to be rejected, because the said claim was regularly surveyed, and the survey thereof
397 regularly approved by U. S. Surveyor General John C. Hays, in May, 1857, which survey was in strict conformity with the final decree of confirmation, as by reference thereto will fully appear.

8th. The said survey of U. S. Surveyor Gen'l Mandeville ought to be rejected, and the survey heretofore made by the sa
General Hayes ought to be adopted, because the latter
eastern boundary in pursuance of the final decree, and the
nores the said decree altogether, and professes to follow th
and illegal instructions of the Secretary of the Interior, sa
tions being in direct conflict with said final decree, and w
dence in the case filed before the land commissioners before
said eastern boundary was a question litigated by both part
and settled by the said final decree.

9th. The said survey of Surveyor Gen'l Mandeville, o
rejected because it embraces within its limits the
398 large number of bona fide settlers upon the public la
United States, which lands were segregated from the
and surveyed and approved as public lands and offered
pre-emptioners by the President of the United States, by h
mation of date 30th day of June, 1858.

10th. The said survey of Surveyor General Mandeville ought to be rejected because it excludes from its limits the lands purchased by a large number of bona fide purchasers, who, for valuable considerations paid to claimants, purchased large portions of said tract after a regular and approved survey of said grant had been made by the U. S. surveyor gen'l for Cal., and within the limits of said survey.

11th. The said survey ought to be rejected because claimants allege that it is made contrary to the judgment and without the aid of the discretion of the U. S. surveyor gen'l, but is made by said officer to
conform to the instructions of the Secretary of the Interior,
399 given in this case, which instructions are contrary to the general instructions of said Secretary in relation to surveys. The claimants claim and aver that they are entitled to present to this court, for its consideration, a survey of said tract of land made by U. S. surveyor general, according to his own judgment and discretion freely exercised.

HALLECK, PEACHY & BILLINGS, *Att'ys.*
THOMPSON, IRVING & PATE, AND CATLIN,
Of Counsel.

Endorsed: Filed Jan'y 21, 1860.

W. H. CHEVERS, *Clerk.*

Dep. of Geo. H. Goddard, for claimants.

DISTRICT COURT OF THE UNITED STATES,
Northern District of California:

THE UNITED STATES
vs.
EXECUTORS OF JOSEPH L. FOLSOM *et als.*

SAN FRANCISCO, *May 14th*, 1860.

On this day, before me, William H. Chevers, a commis-
400 sioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Geo. H. Goddard, a witness produced on behalf of the claimant in case No. 359, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 321 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: R. Aug. Thompson, esq., and A. P. Catlin, esq., of counsel for claimant; and Tully R. Wise, esq., acting U. S. att'y, for the U. S.

Question 1st, by counsel for the claimant. What is your name, age, residence, and occupation?

Ans. My name is Geo. H. Goddard; my age is forty-one years; my residence is Sacramento; and my occupation is that of civil engineer and surveyor.

2nd. Do you hold any office under the State; if so, what?

401 Ans. I am locater of school lands, and the Marysville land district

3rd. Are you acquainted with the rancho "Rio de los Americanos?"

Ans. I am.

4th. Have you made a topographical survey of that rancho and adjoining lands; and if so, when?

Ans. I have; it has just been completed. The map herewith exhibited, marked Exhibit No. 1, W. H. C., to be annexed to this deposition, is a topographical map of the rancho "Rio de los Americanos," and the country adjacent thereto; and Exhibit No. 2, W. H. C., to be annexed to this deposition, is a profile map, showing three lines of profile exhibiting the elevation and rise of the country, as shown on Exhibit No. 1.

5th. State what part of Exhibit No. 1 is represented by Exhibit No. 2.

Ans. It exhibits the levels on the line of the Placerville
402 road, from the Leidesdorff adobe house, which is about half a mile from the oak tree corner to the foot hills, as marked on this map No. 1, and the profile is thence continued as far as the El Dorado house, on the Placerville road. The section lines shown on Exhibit No. 2 correspond with the north and south section lines on Exhibit No. 1.

Profile No. 2 begins at a point marked 285 in red ink, on the north bank of the American river, crossing the American river at the mouth of Alder creek, thence easterly to the foot hills, as indicated by a red line on Exhibit No. 1. The portion west of the point of beginning, as shown on the profile, represents the average level of the plain west of that point on the north bank of the river, for a distance of about three miles and a half.

Profile No. 3 begins at a point marked 300 in red ink, on the north bank of the American river, west of Folsom, runs thence east on the township line to the foot hills, at a point marked 1011 in red ink.

403 6th. Please describe the elevation of the country as shown by profile No. 1, to the point where the country begins to rise rapidly, marked "Carson creek," and the manner in which the rise of the country is indicated by the profile.

Ans. The base lines represents the sea level; the section lines are one mile apart, and the figures, from 10 to 70, inclusive, represent the distance in chains along the line; the vertical scale, represented by the red lines running parallel with the base line, shows 10 feet elevation for the smallest subdivisions, as explained by the scale on the left hand side of each profile; the figures from 99 to 465.01, inclusive, show the elevation of the country at the respective points where they are written on the profile. This explanation applies equally to each of the profiles.

7th. Please state the cause of the depression in the general level of the country, as shown on profile No. 2, between the points
404 marked "Mississippi Bar hill," and "Alder Creek hill."

Ans. It is caused by the American river flowing between them. It is the valley of the river; if it were not for the valley of the river, it would be a continuous plain all the way across.

8th. What is represented by the lines rising from the point marked "American river, at the mouth of Alder creek," to the point marked "Alder Creek hill" on the east, and that marked "Mississippi Bar hill" on the west?

Ans. It represents the rise from the American river, at low water, to the top of the bluff banks on each side of the river, or general level of the valley.

9th. What is the general character of the country easterly from the mouth of Alder creek, through which that stream flows, and contiguous thereto up to the township line, laid down as the eastern boundary of the first survey?

405 Ans. It is a level prarie country, cut down by the gulches and creeks which run into Alder creek.

10th. What is the character of the country lying between Alder creek on the south, the American river on the west and north, and the said township line?

Ans. It is a continuation of the same prarie land up to the line of the river bluffs, which recede from the river for a distance of about three miles above Alder creek, up the river, at which point they close in and form a cañon, through which the river passes up to the township line. This country is cut up by creeks and gulches, which

flow into the river and its tributaries, the banks of which form bluffs. At the extreme northern point of the tract just described there is an isolated hill which rises above the general level of the prairie. The bluffs, as well as the hill spoken of, are shown by the topography of the map (Exhibit No. 1.) The isolated hill just spoken of is at the southeast corner of section 24, of township 10 north, range 7 east.

406 11th. What is the average heighth of those bluffs above the level of the river, or, in other words, the general elevation of the plain above the river?

Ans. It is from 160 to 200 feet.

12th. Describe how the country rises from the river to the general level of the plain, between the extreme western and eastern limits of the first survey, as delineated on the map?

Ans. The bluffs, as just described, are immediately adjoining the river for a distance of about two miles from the northeastern corner of the survey, forming but one rise from the river to the top of the bluff; they then recede from the river and form in steps, as represented in profiles Nos. 2 and 3, where those profiles cross the river. Between the mouth of Alder creek and the western end of the survey the bluffs recede still further from the river, and form a series of steps, as shown on profile No. 1, and are also shown by the topog-

407 raphy on the map, Exhibit No. 1.

13th Point out on Exhibit No. 1, and on Exhibit No. 2, the points where the country first rises above the general level of the plain into well-defined hills.

Ans. The range marked "White Rock range" on both maps represent the first well defined hills rising above the general level of the plain, and is situated at the base of the foot hills. The elevation of that range is shown on the profiles by the vertical scale.

14th. Are there any elevations or ranges of hills rising above the general level of the plain lying west of the township line dividing ranges 7 and 8 east, and forming the eastern boundary of the first survey?

Ans. There are not, except the banks of the gulches and creeks, before described, and the steps of the bluffs, before described, and they do not rise above the general level of the plain.

15th. Were this map and profiles compiled by you, fr

408 actual surveys made by yourself, and were the elevations measured by yourself? and if so, describe how much time and labor you bestowed upon them.

Ans. The map was compiled by me from my own surveys, and from the official plats of the U. S. surveys, the country boundary surveys, and other reliable surveys, examined by me, and on file in my office. The profiles are entirely from my own surveys. The topography of the map is from my own surveys. There has been from two to three months' labor been bestowed on the field-work and maps.

16th. Are the creeks marked Buffalo creek, Alder creek, and Willow creek correctly laid down on this map, Exhibit No. 1?

Ans. They are.

17th. State what you know respecting the survey and sale of lands by the government in township 9 north, range 8 east.

409 Ans. The township was surveyed by Mr. Jones, United States deputy surveyor, in 1855. The township plat, placed on file in the district office in the spring of 1856, and advertised for sale in the President's proclamation for the 15th Feb'y, 1859. All the tracts of land in the township shaded yellow have been sold to settlers at the district office, and those colored green have been accepted by the district office as State selections, under the act of the sale of 500,000 acres. selected by me as locating agent of the district. In addition to this, there was a considerable amount applied for, but it was refused on the grounds that it was mineral land.

(Question and answer objected to by counsel for the U. S , as irrelevant and incompetent, the lands spoken of by the witness being outside of the lines claimed by the confirmees; and because this controversy is respecting the lands petitioned for, and granted to Leidesdorff, before the conquest of the country by the Americans.)

410 18th. State what are indicated by the figures in red ink, on different parts of Exhibit No. 1.

Ans. They are the elevations above the sea level in feet.

19th. State whether you have marked upon Exhibit No. 1 the lines of the last approved survey returned by the surveyor general as the official map of the location of the grant confirmed in this case; and if so, in what manner have you marked it.

Ans. I have. It is marked with a red dotted line, on a fine black line.

20th. State, if you know, what portion of the lands lying between the southern lines of the first approved survey, and the southern and eastern lines of the last approved survey, returned as the official survey in this case, were settled and occupied, and by what right their claims are held.

411 Ans. All the settlers whose names I know, are upon the map. Those shaded green have been entered as school lands, the others are held by pre-emption. There are many other settlers on that portion of the land with whose names I am unacquainted.

(Answer objected to, as irrelevant.)

Cross-examination.—Questions by acting U. S. att'y

Ques. 21. In your answer to ques. 4 you state that you made a topographical survey of the Rancho de los Americanos and adjoining lands, shown by Exhibits Nos. 1 and 2, W. H. C. State at whose instance this survey was made, and under what instructions you acted.

Ans. It was commenced at the instance of Mrs. Anderson and other parties; it was finished at the instance of the Natoma Water Company. It was for the purpose of getting the topography of the country.

412 22nd. State the reasons for selecting the line of the Placerville road for profile No. 1.

Ans. Because it ran through the centre of the ranch from the river to the foot hills, on, or very nearly so, the divide of the waters which flow into the American and Cosumnes river, thereby showing the true

rise of the country on the backbone or divide. In making a topographical survey, I would say that there are two points always to be taken: one along the divide as the line of greatest heighths, and the other on the line of lowest level. In this case the Placerville road represents the divide, and the American river the lowest level.

23rd. Exhibits Nos. 1 and 2, then, show the topography of the country to the extent delineated upon them, without regard to the particular portion granted to Leidesdorff, and without regard to the appearance of the country from any particular point?

413 Ans. They show the country lying between the commencement of the land granted to Leidesdorff, and the *lomarias* or foot hills, which are described in the grant as the eastern boundary.

24th. In making this topographical sketch did you have in your possession, for reference, copies of the original grant and deseño, and did you make the sketch with the intention of including in it the lands shown on said deseño?

Ans. I had copies of the grant and deseño. I intended to include the whole of the country from the western boundary of the grant to the foot hills.

25th. Commencing at the western boundary of the grant, why did you go to what you call the foot hills on the east, instead of stopping at the eastern limit of the grant as shown on the diseño?

(Question objected to by counsel for claimant, because it assumes as fact what is not truth; the diseño having the *lomerias* re-

414 ferred to in grant distinctly laid down.)

Ans. I considered that the foot hills were the eastern limits of the grant

26th. At what point on the Placerville road, west of the place marked 212 in red, north of the figure 33 in black, can you see the foot hills delineated on the extreme eastern edge of your plat?

Ans. At any point where the trees do not obstruct a clear view, I can see the foot hills from Deer Creek hill to the point marked 1011 in red.

27th. What separates the mountain marked 1011 in red from those marked "White Rock range?" or are they the same range?

Ans. They are divided by the gulches running south into Carson creek, and are shown on profiles No. 2 and No. 3.

415 28th. Is not the White Rock range connected with and a part of the same range marked 1011 in red, near the place where the Folsom road crosses to Clarksville?

Ans. It is united by spurs, as shown by the topography on Exhibit No. 1. It is divided from the foot hills by two valleys, as shown on profile No. 3. I consider them as two distinct ranges.

29th. What relation, then, does the White Rock range bear to the Sierra Nevada mountains? Do you consider that range a portion of the foot hills, or not?

Ans. I do not consider that it bears any relation to the Sierra whatever, because they need not be crossed in crossing the Sierra. When I made the survey over the Sierra for the State in 1855, I did not show the White Rock range at all, by avoiding them going up the valley of Carson creek.

30th. At the place on Exhibit No. 1 marked "Oak Grove House," the heighth is marked in red 253. State whether on the ridge running towards Alder creek, at 263, there is any place of a lower
416 heighth than that marked Oak Grove House; or does the Placerville road cross the ridge at its lowest point?

Ans. The country is a plain or continuous level between those two points, except where it is intersected by the valley of Buffalo creek. The Placerville road does not cross at its lowest point.

31st. Then, standing at the place on the railroad marked 154 in red, and looking eastwardly, the vision is intercepted, is it not, by a range of hills running from Oak Grove House to Alder creek, from 100 to 110 feet above the point at 154?

Ans. There is no range of hills there at all. The vision cannot be intercepted by what does not exist.

32nd. As you consider the range marked "White Rock range" separate and distinct from the foot hills, state where you con-
417 sider the termination of the White Rock range to the west.

Ans. It is about the ditch marked Natoma canal.

Direct resumed.—Questions by counsel for claimant.

What is the average rise of the plain from the western boundary of the tract to the foot of the White Rock range, according to profile No. 1, in Exhibit No. 2?

Ans. From the western boundary of the tract for the first five sections to the brow of the bluff, the rise is twenty feet to the mile; from that point to the twenty-mile hill, embracing four sections, the rise is 30 feet to the mile; from the last point to the section line, immediately west of the White Rock House, embracing four sections, the rise is 40 feet to the mile.

GEORGE H. GODDARD.

Sworn to and subscribed this 14th day of May, A. D. 1860, before me.

W. H. CHEVERS,
U. S. Com.

418 Endorsed: Filed May 19, 1860.

W. H. CHEVERS, *Clerk.*

419 *Dep. of John Halls, on behalf of claimants.*

District court of the United States, northern district of California.

THE UNITED STATES
vs.
EXECUTORS OF JOS. L. FOLSOM *et al.*

SAN FRANCISCO, *May 15th*, 1860.

On this day, before me, William H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John Halls, a witness produced on behalf of the claimants in case No. 359, being an appeal from the

board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 321 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: R. Aug. Thompson, esq., and A. P. Catlin, esq., of counsel for claimant; and Tully R. Wise, esq., acting U. S. att'y, for the U. S.

Question 1st, by counsel for the claimant. What is your
420 name, age, and place of residence, and occupation?

Ans. My name is John Halls; I am fifty-seven years of age, and reside in San Francisco, and my profession is that of surveyor.

2nd. State what country you are a native of; how long you have been in California; and how long have you been employed as a surveyor, and in what capacities?

Ans. I am a native of England; I have been in California since 1846; I was always in the employment of the British government, as surveyor and engineer, in Australia, New Zealand, and India, until I came to California.

3rd. Did you know Wm. A. Leidesdorff, and did you survey any lands for him? If so, state what land you surveyed, and when.

Ans. I did know Wm. A. Leidesdorff; I have surveyed a good many lands for him—some in San Francisco, a rancho near
421 Martinez, and the rancho Rio de los Americanos, in Sacramento county, which last survey I made in September, 1847.

4th. State whether you have the field-notes or plat of that last-mentioned survey.

Ans. I have not.

5th. State what became of them.

Ans. They were all burnt up in the great fire in San Francisco.

6th. Are you able to produce any copy of the field-notes which you made?

Ans. I am not; I have none.

7th. At whose request did you make the said survey?

Ans. At the request of Capt. Leidesdorff.

8th. How much land was contained in the survey as made by you?

Ans. The description called for eight leagues, and I con-
422 sequently measured off that amount.

9th. Describe the starting point of the survey, and how you found it.

Ans. The starting point was an oak tree, with a cross upon it, on the south bank of the American river, which was pointed out to me by Mr. Sinclair and others. The tree was about a half mile below the adobe house.

10th. Have you visited the Rancho de los Americanos recently; and if so, at about what time?

Ans. I don't remember exactly, but it was during the session of the agricultural fair, in September, 1859.

11th. Could you recognise the place where you located the eastern boundary of your survey? If so, please point it out on Exhibit No. 1, W. H. C., to deposition of Geo. H. Goddard, in this case.

Ans. I came out near the junction of the north and south
423 forks of the American river. It was a due south line from there that I ran which made the eastern boundary. It was about ten or eleven chains below the forks where my line intersected the river

12th. State how you ran your back line.

Ans. I ran the back line straight, so as to include the quantity.

13th. State what instructions Leidesdorff gave you respecting the manner of making the survey.

Ans. He gave me a sketch, the grant, and also a copy of his application for the land; verbally he told me that his *mayordomo* would show me the foot hills, and he gave me a letter to Capt. Sutter, to point out the starting point, and he told me particularly to measure up to the foot hills, as pointed out by his *mayordomo*.

14th. State the reason why he wished you to measure to the foot hills.

424 Ans. It was the best land for grazing purposes. When I got through with the survey, Leidesdorff told me that I had left out the best land, where his cattle were grazing.

15th. What land did Leidesdorff refer to when he stated that you left out the best land?

Ans. On the east, up the river to the foot hills.

16th. State why the land on the east of the grant towards the foot hills is better than that on the south of the grant.

(Objected to, as irrelevant, and because the witness has stated his business to be that of surveyor and not that of a cattle-raiser.)

Ans. I could not give any reason—it looks to me better.

17th. Was there water on the easterly side of the grant?

Ans. I found water somewhere about there to drink.

425 18th. State whether the land is or is not better for grazing cattle upon the eastern portion of your survey than the land upon the southern portion of your survey; and if it is better, state the reasons why.

(Same objection as the last.)

Ans. I think it is, because there is more grass upon it.

19th State what other surveying you did upon the tract for Mr. Leidesdorff at that time?

Ans. I subdivided the ranch into eight leagues by actual measurement; I put a stake at the corner of each league.

20th. Was that done at Mr. Leidesdorff's request; and if so, what was his object?

Ans. It was done at his request. It was done for the purpose of selling it.

426 21st. In locating the ranch did you adhere to the sketch and grant and application for the land which Mr. Leidesdorff placed in your hands, or did you follow the verbal instructions which Leidesdorff gave you?

Ans. I went as near to the description of the grant as I possibly could.

22nd. Previous to your visit to the land in September last, how long had it been since you were on the land?

Ans. I think I went through there in 1848, and not since, except in September last.

23rd. State what natural features of the ground you remembered in the neighborhood of the Estera boundary, before going there in September last.

Ans. I remembered that the ground was undulating.

24th. Did you meander the river in your survey?

Ans. I did with the greatest nicety I could not make my
427 calculations for quantity without it.

25th. State what was the character of the banks of the American river near the eastern boundary, from your recollection of it, in 1847.

Ans. It was rocky. A little below the eastern boundary there were a good many slate rocks; they were so remarkable as to attract my notice.

26th. Do you know a man named Howell, living on the ranch at the time that you made the survey?

Ans. I do; I recollect him very well. I lodged at his house.

27th. State if he accompanied you on the survey.

Ans. He was with me the first day, on the first line, and helped mark the trees; that was all.

Cross-examination.—Questions by acting U. S. att'y.

Ques. 28th. When you made the engagement with Leides-
428 dorff to survey this ranch, where were you?

Ans. I was in San Francisco.

29th. State what passed between Leidesdorff and yourself when he engaged you to make the survey.

Ans Leidesdorff had an idea that the land would run up to the foot hills, but he wanted me to survey it according to the descriptions in the grant and his application.

(Answer objected to, as not responsive to the question.)

30th. At the time Leidesdorff engaged you to make the survey, without mentioning the private terms of payment, state exactly what he said to you—what he wished done.

Ans. He wanted the ranch measured according to the descriptions he gave me.

31st. What were those descriptions?

429 Ans. To extend from a tree pointed out on the American river to the foot hills. He first gave me the description in the grant, which he translated to me, also a translation of the application for the land; he also gave me a rough sketch of the land, which he made himself, which showed his adobe house, the forks of the river, and the foot hills; and he had a firm idea that the land would extend to the foot hills

32nd. Did he not instruct you to survey this ranch as near as possible in accordance with the sketch he gave you?

Ans. He did. He had an idea that the sketch and descriptions in the application and grant all corresponded.

33rd. Did Leidesdorff accompany you on this survey?

Ans. No.

34th. When you arrived on the ground and ascertained the beginning point, state what you done after that.

430 Ans. Starting from the marked tree, I ran up the river to where the mayor domo showed me the foot hills. I then calculated the quantities contained in the sinuosities of the river. I then run out the west line due south from the oak tree, the starting point, two leagues, and found a portion of that line marked on trees; from that line I projected a line, due east, at right angles, four leagues, and then by a line due north and parallel with the west line to its intersection with the river, by which means I ascertained the upper boundary of the survey on the river, and then closed the survey by a line drawn from the southern terminus of the western line of the tract to a point in the parallel line forming the eastern boundary, which would include the quantity of eight square leagues.

35th. After making this survey did you report the result to Mr. Leidesdorff? and if so, state whether in person or by letter.

Ans. I did, personally.

431 36th. What did he say?

Ans He was much disappointed because it did not extend up to the foot hills.

37th. What explanation, if any, did you give him?

Ans. I told him that the foot hills were some two or three miles further than the four leagues.

38th. Could you have made the survey in any manner, having your western line fixed, that would have given more river front than you did?

Ans. Yes, sir, decidedly so.

39th. Why then did you not go nearer the foot hills, as Leidesdorff wished?

Ans. The descriptions in the papers which he gave me would not allow me. I mean the descriptions in the grant and petition. The sketch would have allowed me to.

40th. Then you extended the eastern line as far as you pos-
432 sibly could, in conformity with what you knew the wishes of Mr. Leidesdorff to be, only restrained by the description in the grant and petition, and without regard to the construction which that description might bear in your mind, if you had not been controlled by your knowledge of Mr. Leidesdorff's wishes.

(Question objected to—

First. Because it is not a question.

Second. It assumes as conclusion that the previous answers of the witness are directly the reverse of what he testified.

Third. Because it is argumentative, and because it is incomprehensible.)

Ans. I placed the easterly boundary to correspond literally with the description in the grant to the best of my ability. I was not controlled by Mr. Leidesdorff's wishes; if I had been I could have run it up to the foot hills.

41st. State your recollection of the description contained
433 in the grant and petition.

Ans. I don't recollect much of it. My impression is that it was to be measured two leagues wide and four leagues long.

JOHN HALLS.

Sworn to and subscribed this 15th May, 1860, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed May 19, 1860.

W. H. CHEVERS, *Clerk.*

Monition.

UNITED STATES OF AMERICA,
Northern district of California, ss:

[SEAL.] *The President of the United States of America to the marshal of the United States for the northern district of California, greeting:*

Whereas objection has been made to the official survey and location of the land finally confirmed, in case No. 359, to the executors of Jos. L. Folsom *et al*, known as Rio de los Americanos, and situated
434 in the county of Sacramento, in said district.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have, an interest in such survey and location, that they be and appear before the district court of the United States for said district, sitting in land cases, on or before Wednesday, the 26th day of September, A. D. 1860, at 11 o'clock, a. m., (if that day shall be a day of jurisdiction; and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken. And what you shall have done under this writ do you then and there make return thereon.

Witness the Hon. Ogden Hoffman, judge of said court at San Francisco, in said district, this 20th day of August, A. D. 1860.

W. H. CHEVERS, *Clerk.*

Endorsed: The within monition was received by me on Monday
435 the 20th day of August, 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice, for four consecutive Wednesdays, in the San Francisco Herald, commencing on the 22nd day of August, 1860; and for consecutive Saturdays in the Sacramento Standard, a paper published nearest the land, commencing on the 25th day of August, 1860.

Dated San Francisco, Aug. 22, 1860.

P. L. SOLOMON,
U. S. Marshal.

Endorsed: Returnable 26th Sept., 1860; issued August 20, 1860.
Filed Sept. 26, 1860.

W. H. CHEVERS, *Clerk.*

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Order on return of monition.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday the 26th day of September, in the year of our Lord one thousand eight hundred and sixty. Present, the honorable Ogden Hoffman, district judge.

436 THE UNITED STATES *v.* JOSEPH L. FOLSOM *et al.* } In land cases.—District court, No. 359. Land com., No 321.

And now, at this day, the United States marshal having made return upon the monition heretofore issued in this cause, that he had given due notice as therein commanded, proclamation was made that all parties having, or claiming to have, an interest in the survey and location of the land finally confirmed in the above-entitled cause, appear and intervene for the protection of such interest. The U. S. attorney, Ed. Randolph, John B. Williams, and Andrew Glassell, appeared in behalf of the United States; R. Aug. Thompson and Fred. Billings appeared for the claimants, and the Natoma Water Company appeared by their counsel, R. Aug. Thompson; no other party appearing, whereupon it is ordered that the default of all parties not appearing as aforesaid be, and the same is hereby, entered.

Endorsed: Filed Sept. 26th, 1860.

W. H. CHEVERS, *Clerk*.

437 *Petition of Natoma Water Co. et al. to intervene.*

FOLSOM, *Sept. 15th*, 1860.

We, the undersigned, residents and owners of real estate in the town of Folsom and its vicinity, claiming title to our respective lots and tracts of land by purchase from the estate of J. L. Folsom, deceased, of parcels of the "Rancho Rio de los Americanos," desire to intervene and appear in the matter of the survey of the said rancho in the U. S. district court for the northern district of California, for the protection of our interests therein, and for that purpose do hereby authorize and request ———— to appear in said court in our behalf, and do all necessary things thereon for the defense and protection of our rights and interests.

Natoma water and mining Company, by A. P. Catlin, pres't.
John L. Craig.
A. D. Patterson.
A. C. Donaldson.
D. Wellington.
Bradley & Seymour.
G. M. Cole.
E. D. Hoskins.
W. W. Dresse.
J. & J. Spruance.
Wm. Murray.
Wm. Parkhurst P. Stevens.
P. F. Chamberlin.
Daniel Walters.
438 Benjamin Wood.
A. Colwell.
J. Dresser.

Ira R. Saunders.
James Wilber.
A. T. Arrowsmith.
Francis Graham.
Stephen Simonds.
O. C. Lewis.
H. L. Hawes.
B. C. Quigby.
A. J. Sait & Co.
Elise Multon.
Francis Clark.
C. S. H. Palmer.
Joseph Fiel.
W. S. Kendall.
P. F. Richards.
Frank Wheeler.
Chas. K. Shirland.
John ———
Henry B. Waddilove.
L. Dunn.
David S. Bates.
Tho. H. Mars.
Wm. Camp.
C. G. W. F
Stephen Addison.
Wilson Davis.
V. M. Hewes.
S. V. Blakesle.
Peter Morris.
439 S. Hanak,
H. M. Pennington.
Milton Rose.
Wm. Giblin.
Mrs. M. A. Bartow.
Ann S. Ate.
Sam'l Tuck.
A. P. Catlin.
P. S. Weathews.
James Babit.
J. M. Sadre.
J. Murray.
Anna F. Goisseaud.
Henry Contle.
William Fulcher.
J. H. Humphreys.
Wm. G. Blakely.
L. Bradley, by his attorney in fact, C. H. Bradley.
Folsom Institute, by A. C. Donaldson, Presd't F. I.
Common school house and lot, by A. C. Donaldson, Sec. B. Trust.
Episcopal church lot, by A. C. Donaldson, Sec. Warden.
Folsom Cemetery, by A. C. Donaldson, Trustee.
A. B. Coomach.
E. D. Shirland.
Madame Josefa de Regnault.
E. H. Williams.
440 J. G. Burnham.
E. G. Parker.
James L. Meredith.
H. B. Meredith.
John J. Hutchinson, pr. Meredith, ag't.
P. F. Whyte.
H. G. Livermore, and
H. P. Livermore, by their attorney in fact, E. D. Hoskins.

THE UNITED STATES
vs.
HALLECK, PEACHY & VAN WINKLE,
Executors of J. L. FOLSOM, dec'd.

In the U. S. district court for the northern district of California.

STATE OF CALIFORNIA,
City and county of San Francisco, ss:

Amos P. Catlin, being duly sworn, deposeth and saith that he is acquainted with nearly all of the persons whose names are subscribed to the foregoing document, and that they all own separate lots and parcels of land in the town of Folsom and its immediate vicinity,
441 and derived title thereto through purchase, for valuable consid-

erations paid, of the executors of J. L. Folsom, dec'd, of portions of the grant known as the rancho Rio de los Americanos. That such purchases were made in good faith and after the said rancho had been surveyed by the late surveyor general, John C. Hayes, which survey was approved as a final survey by the said surveyor general on the 29th day of May, 1857, and in the same year was published by the United States in the plat of surveys for California as a final and approved survey of said rancho. That in February, 1858, the United States, by the proclamation of the President, offered for sale a large portion of the public lands lying immediately adjoining the southern boundary line of said survey. That believing the said lands were in fact portions of the said grant, and that said survey was conclusive as between the United States and the said claimants, the said parties have improved their said lands in good faith, so that now the agregate value of that portion thereof which is excluded by the survey now in controversy in this court amounts to over two hundred thousand dollars. That the executors of Folsom have received
442 for the sale of the portions of land included in the said first survey, and excluded by the survey now pending in this court, over fifty thousand dollars.

Deponent further says that he is the president and acting agent of the Natoma Water and Mining Company, a corporation; that said company, in the latter part of the year 1857, after said final survey was made and approved as aforesaid, purchased a part of said "Rancho Rio de los Americanos," to wit, over 9,000 acres of the eastern portion thereof, according to the boundary lines of said rancho, as established by said first survey. That said purchase was made in good faith and for a valuable consideration then paid, and in the belief that the lands so purchased were a part of the said grant, the same having been for a long time in the possession of the said Folsom and his grantors.

Wherefore the said parties ask that they may be allowed to intervene herein, in opposition to the survey now pending in this court by their attorney, R. A. Thompson, esq'r.

443 A. P. CATLIN.

Subscribed and sworn to before me this 26th day of September A. D. 1860.

JNO. B. WILLIAMS,
U. S. Com'r.

Endorsed: Filed Sept. 26, 1860.

W. H. CHEVERS, *Clerk.*

Exceptions on part of the U. S.

District court of the United States, northern district of California.

THE UNITED STATES *vs.* J. L. FOLSOM *et al.* } No. 359.—"Rio de los Americanos."

The United States, by their attorney, Calhoun Benham, except to the survey of the above-named ranch or land claim, the plat of which survey is now on file in this court, and state the following objections to the approval of the said survey by this court:

1st. That the same is not according to the final decree of
444 confirmation entered in the above-entitled cause, or to the grant and other title papers upon which that decree was founded, or to the evidence of the witnesses in the said cause, but in violation thereof is made to extend more than two leagues south of the American river, and thereby to embrace public lands of the United States not rightfully included within the limits of the said ranch or land claim.

2d. That the said survey wrongfully includes lands not at any time claimed by the claimants in the above-entitled cause, but, on the contrary, expressly disclaimed by their words and acts; lands which, upon the faith of such admissions, were surveyed and advertised to be sold by the United States as public lands, and on which, upon the faith of the premises, settlers, and pre-emptors in good faith, have entered and made valuable improvements; and in the enjoyment of which they claim and have a right to claim the protection of the United States.

445 3d. That the said survey is erroneous, because the land granted and confirmed was a tract bounded on the west by Sutter's eastern line; on the north by the American river; on the east by Alder creek and the neighboring low hills; and on the south by vacant lands; the southern line to be at a distance of two leagues from the river, as near as may be, and run on sub-division lines, so as to meet the meanderings of the river.

Whereas the said survey does not regard these boundaries, but shows a southern line at right angles with the western line—disregards the meanderings of the river, and thereby includes within its lines a much larger quantity of land than was granted, and also includes many settlers under the United States, who have so settled and made improvements in good faith long before the said official survey was made.

Respectfully submitted.

JNO. J. WILLIAMS,

acting in this case as U. S. district attorney at the request of Mr. Benham, who was once counsel for some of the claimants.

446 Endorsed: Filed Oct. 10th, 1860.

W. H. CHEVERS, *Clerk.*

Dep. of Willard Buzzell on part of claim'ts.

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* JOS. L. FOLSOM *et al.* } In land cases.—District court, No. 359.—Land com., No. 321.

Be it remembered that on this second day of March, A. D. 1861, at the city of San Francisco in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Willard Buzzell, a witness produced in behalf of claimants, J. L. Folsom *et al*, in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

447

Present: R. Aug. Thompson, esq., of counsel for claimants; the United States district att'y and Jno. B. Williams, esq., for the United States.

Questions in behalf of the claimants:

Question 1st. What is your name, age and place of residence?

Ans. My name is Willard Buzzell, my age is 40 years, and I reside at Half Moon bay, San Mateo county, and my occupation is that of farmer.

2nd. Are you acquainted with the Rancho de los Americanos, or Leidesdorff's ranch?

Ans. I am.

3rd. Did you ever occupy said rancho, and if so by what authority, when, how long, and in what capacity?

448

Ans. I did occupy it by the authority of Wm. A. Leidesdorff. I first occupied it in the spring of 1845, and I continued to occupy it until February, 1847. I occupied it in farming and stocking for Wm. A. Leidesdorff.

4th. State what stock you had upon the place, and about the quantity of each kind.

Ans. I first took there about 500 head of cattle, mostly cows, 150 sheep, some 30 or 35 mares, and some fifteen or twenty tame horses.

5th. When you first went there to reside were the boundaries pointed out to you, and if so, by whom and for what purpose?

Ans. The boundaries were pointed out to me by a man named San Neal, a blacksmith in the employ of J. A. Sutter. The boundaries were pointed out so that I might know where to locate my houses, and that I might have control of the Indians within those boundaries.

449

6th. Describe the boundaries as they were then pointed

out to you, commencing with the western, then the southern, and then the eastern boundaries.

(Objected to by counsel for the U. S. because it is not competent to prove boundaries by parol evidence.)

Ans. On the west, the boundary was an oak tree, about half a mile west of the adobe house I built, and from 50 to 100 yards east of the mill-dam subsequently built by Sutter; from the oak tree the line run in a southerly direction about six miles to Rocky creek, which was the southern boundary; the boundary in the east was the low hills.

7th. How far was it from the oak tree you speak of to the low hills comprising the eastern boundary?

Ans. Some twelve miles we always called it.

8th. State whether you know of any creek, ravine or gulch,
450 as being regarded at that time as the eastern boundary.

Ans. No, sir; the low hills were the boundary.

9th. Do you know a stream or gulch putting into the American river, between the western boundary and the low hills of which you have spoken as the eastern boundary, now known as Alder creek.

Ans. I knew of dry ravines, but in the winter there was water in them. I never knew any by that name, however, but I know the gulch that is now called Alder creek. It is a very deep ravine; in the winter it has the appearance of a river, but in the summer it is dry.

10th. How far is that ravine east of the western boundary?

(Objected to as leading.)

Ans. I should think some seven or eight miles, following up the river.

11th. How far are the low hills of which you have spoken above Alder creek?

451 Ans. About four miles.

12th Did or did not the stock in your charge on the ranch range above the ravine known as Alder creek?

Ans. They did.

13th. State, if you know, where the head of Alder creek is, and what is its general direction to its junction with the river?

Ans. I couldn't exactly state its general direction. It rises in the low hills of which I have spoken. It is nine or ten years since I was there.

14th. What is the character of the country between the western boundary and the low hills?

Ans. There is a river bottom and low lands; as you come up from the bottom the land rises up to a table land; as you go up the river the higher it grows, in some places as high as one hundred feet. This table land extends to the low hills before spoken of.

452 15th. State whether there are any hills or *lomerias* at or near the mouth of Alder creek, or between that and the point where the creek leaves the low hills?

Ans. It could hardly be called hills, but it is rolling land.

16th. State whether the rolling land you speak of in the neighborhood of Alder creek rises above the general level of the table land lying between the low hills and the western boundary, or whether

its rolling character is not caused by the streams and gulches putting into the creek or river, and cutting through the general level of the plain?

Ans. The country generally rises up to the hills on an enclosed plane, and the rolling character of the country is caused by gulches and ravines running through the land.

17th. In standing on the table land at a point four or five miles below Alder creek, and looking east, can you see any hills except those that you have described as lying about four miles above
453 Alder creek; that is, between where you stand and those hills?

Ans. No, sir.

18th. What was the character of the land for grazing purposes lying between Alder creek and the low hills you have spoken of as compared with that below Alder creek?

Ans. Part of it was as good above as it was below. It was "bunch grass" generally.

Cross-examination.

Questions by counsel for the U. S:

Question 19th. Were not the boundaries pointed out to you by Neal, whom you say was then in the employ of Sutter, more particularly for the purpose of showing you the line between Sutter's land and the Leidesdorff ranch, in order that there might be no dispute on that point?

Ans. The boundaries were pointed out to me to prevent me from building on Sutter's land, and to keep me on the Leidesdorff ranch; and to let me know where the land lay.

454 20th. What object marking the boundary did Neal first show you?

Ans. The oak tree I have spoken of. We were both on horseback.

21st. To what point did you next go?

Ans. We went out on the table land south from the river about a mile; we then rode up along the table land in an easterly direction about two miles, and there he said, pointing out the low hills, "those are your boundaries;" from that point we started for the river to find a building site. When we started from the oak tree, he told me that Rocky creek, with which he knew I was familiar, was the boundary in that direction.

22nd. You have stated that the stock in your charge ranged above the ravine known as Alder creek. How far did you ever know them to range above Alder creek?

Ans. Frequently two miles, sometimes as far as the low hills.

455 23rd. Did you ascertain this because you had occasion to go after them to bring them back?

Ans. Yes, sir.

24th. When the cattle ranged in that direction, how far from the river did they go to avoid Alder creek?

Ans. Some two miles.

Direct examination resumed.

Questions by counsel for claimant:

25th. From the point on the plain two miles east of the western boundary where Neal pointed out to you the low hills, were those hills well defined to the view and plainly in sight?

Ans. They were.

26th. Were you at that time acquainted with those hills, and their position as bounding or limiting the table land on the east?

Objected to as irrelevant.

Ans. I had never been there.

456 27th. Did you afterwards become acquainted with those hills, and recogznie them as the hills pointed out to you by Neal?

Ans. Yes, sir.

28th. From the point on the table land where you stood with Neal, were there any hills between you and the hills pointed out by him rising above the general level of the plain, so as to intercept your view of the latter?

Ans. No, sir.

WILLARD BUZZELL.

Sworn to and subscribed this second day of March, A. D. 1861, before me.

W. H. CHEVERS,
U. S. Com.

Endorsed: Filed March 6, 1861.

W. H. CHEVERS, *Clerk.*

457 *Dep. of John Bidwell on part of claimant.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* JOS. L. FOLSOM. } In land cases.—Dist. court, No. 359.—Land com., No. 321.

Be it remembered that on this 14th day of March, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared John Bidwell, a witness produced in behalf of claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: R. Aug. Thompson, esq., of counsel for claimant, and Calhoun Benham, esq, U. S. att'y, by P. Della Torre,

458 esq., for the U. S.

Questions in behalf of the claimant:

Question 1st. What is your name, age, and place of residence, and how long have you resided in the State of California?

Ans. My name is John Bidwell; my age is 41 years; and I reside in Chico, Butte county; I have resided in the State of California since 1841.

2nd. Look at the map now shown you marked "A. R. T.," to be attached to this deposition, and to be marked Exhibit Bidwell No. 1, W. H. C., and state what it represents, by whom and when it was made, at whose instance, and what was done with the original.

Ans. I have examined said map. It represents a portion of the Sacramento valley, with the grants of land which had been made by the Mexican government prior to 1844, located in that valley. It was made in 1844, at the instance of Governor Micheltorena,
459 by me. The original, of which this is a copy, was delivered to either Governor Micheltorena or his secretary, Manuel Jimeno.

3rd. Look at the said map, and state if you recognize there the grant made to Wm. A. Leidesdorff, claimed in this case by J. L. Folsom; if so, state how the same is identified thereon.

Ans. It is identified by a quadrangular figure two by four leagues, according to the scale, colored yellow, and marked "Rancho de Leidesdorff."

4th. State whether within the quadrangular figure so identified as the Rancho de Leidesdorff you can locate the position of the present town of Folsom, and how the position of said town is identified thereon?

Ans. I marked a small quadrangular figure within the limits of said ranch, as there delineated, near the word "Folsom," as being the location of the town of Folsom, as near as I am able to do so, by comparing the scale of this map with the actual survey made by A. H. Jones, deputy surveyor, in 1857, and approved by
460 John C. Hays, surveyor general for California, May 29th, 1857.

Examination adjourned by consent of counsel for claimant, and P. Della Torre, esq., for the U. S., until April 1st, 1861, at 10 o'cl'k a. m.

APRIL 1*st*.

Examination of John Bidwell resumed.

Present: Aug. R. Thompson, for claim'ts; C. Benham, esq., U. S. dist. att'y, for U. S.

Cross-examination.

5th. Examine Bidwell No. 1 Exhibit, and state, if you recollect, how many leagues the scale of the oficial map was intended to show.

Ans. I do not remember, but the scale on Bidwell No. 1 is, I presume, a copy of the original, and represents a length of 15 leagues. The word between "De" and "legua" should be "Quince."

6th. From what data did you ascertain the position of the line separating the places marked on said exhibit, "Nova Hel-
461 vetia," and Rancho de Leidesdorff?

Ans. Shortly after I came to the country a tree was pointed out to me, on the south bank of the American river, as Sutter's eastern boundary. I do not know the exact distance from the mouth of the American river to that tree, but it was near and below the site where Leidesdorff made his house in 1845. I also had occasion to see the map of Sutter, made by Vioget, to aid me in locating contiguous ranchos. I mean the map that Sutter retained in his possession. I had not other date, and made no measurements.

7th. From what data did you make so much of the original of Exhibit Bidwell No. 1 as shows the lands of Sutter?

Ans. I made the original of Bidwell No. 1 in Monterey, and referred to Sutter's and other maps filed in the archives at Monterey when I required other information than my own knowledge; and also copies of diseños of tracts, which I had maps of for parties asking for land, which maps were made by me.

462 7th. When you marked out the Rancho de Leidesdorff on the original of Exhibit Bidwell No. 1, did you do so from an original diseño of that land, or merely from your knowledge of the country?

Ans. I do not know whether from seeing the diseño, or from seeing the diseño and knowledge I had of the country too. My knowledge was probably obtained from seeing the original diseño, as well as it being a matter generally known how ranchos were located.

8th. Do you mean to be understood to say in your direct examination that the place marked on Exhibit Bidwell No. 1 as the site of the town of Folsom was known to you at the time the original of the exhibit was made to be within the tract granted to Leidesdorff, or do you merely locate it so by the scale of Exhibit Bidwell No. 1?

Ans. I merely locate it so by the scale.

463 9th. Do you intend to be understood in your direct examination as giving your opinion that the site of the town of Folsom is included within the grant made to Leidesdorff?

(Objected to as asking the opinion of the witness.)

Ans. I have endeavored to avoid giving any opinion about it; and to show how I located the quadrangular figure marked "Folsom," I wish to say that it was done by making it a certain distance east of the meridian line separating the Sutter and Leidesdorff grants.

10th. Then the fact that you marked the figure purporting to designate the town of Folsom has no more significance than if made by any other person?

(Objected to because it is a conclusion, not a question.)

Ans. Precisely so.

11th. The fact that you made the original of Bidwell No. 1,
464 then, affords you no better or fuller means to locate the town of Folsom now than is possessed by any other person familiar with the use of the scale?

(Objected to for the same reason as above, and because it is not competent to argue a case in the deposition.)

Ans. No more than any other person.

Re-direct.

12th. Assuming the meridian line dividing the Leidesdorff and Sutter ranchos to be correct, from your knowledge of the country, and from information derived from the official survey referred to in your examination in chief, would a parallel line to said meridian line, drawn south from the American river, at a distance of four leagues from said meridian line, include the town of Folsom?

(Objected to as incompetent.)

Ans. It would. A parallel line drawn four leagues east
465 of the western boundary of the Leidesdorff grant would include the town of Folsom by the official survey above referred to.

Deposition closed.

JOHN BIDWELL.

Sworn to and subscribed before me April 1st, 1861.

W. H. CHEVERS,
U. S. Com'r.

Endorsed: Filed May 14, 1861.

W. H. CHEVERS, *Clerk.*

466

467 OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of Caliornia, and, as such, having in my office and in my charge and custody the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the one preceding and hereunto annexed page, numbered inclusive, exhibit a true, full, and correct copy of a map, together with the indorsements thereon, as the same appears on file in case No. 147 on the docket of said board of commissioners.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this 6th day of May, 1859.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

468 Endorsed: Filed May 14, 1861.

W. H. CHEVERS, *Clerk.*

Dep. of G. W. Colby on part of U. S.

In the district court of the United States for the district of California.

THE UNITED STATES
v.
EXECUTORS OF FOLSOM ESTATE.
} In land cases. Dist. court, No. 359. Land com. No. 321.

Be it remembered that on this 16th day of April, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil
469 causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared G. W. Colby, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Calhoun Benham, U. S. attorney; P. Della Torre and Jno. B. Williams, for United States, and R. Aug. Thompson, for claimant.

Questions in behalf of U. States:

Question 1st. What is your name, age, residence, and profession?

Ans. Gilbert W. Colby; 35 years of age; reside in Sacramento co., and a farmer by occupation, but was educated at Norwich University as a civil and military engineer.

2nd. Look at this map now shown you and marked "Exhibit Colby No. 1," and say if you have examined the country with refer-
470 ence to the topography delineated upon the map, and if you have, please inform us as to the correctness of the representation.

Answer. I have examined the topography as represented on the map, more particularly on the 7, 8, 9, and 10th of April, 1861, with instruments, and found it generally to be correct as represented on said exhibit. I made the measurement of most of the hills represented on the map and of some hills not on the map. My first starting point was the railroad tract at "Alder Creek Station;" I measured the heights of most of those hills on that level, as represented on the map, and marked the height of the same with blue ink on the map with an index A. C., representing the railroad tract, Alder creek. All those heights marked A. C. on the map were levelled from the railroad tracts, Alder Creek Station. The second station or initial point was the railroad tract at Anderson's; the heights given from that point are
471 represented by figures in blue ink upon the points, with the letter A as an index. The third station or initial point was Willow Creek Ravine, near the railroad crossing. The heights of the hills taken from that point are represented in blue ink, with an index "W. Cr."

The fourth station was "*Prairie City*," and the heights from that point are represented by figures in blue ink, with index *P. C.*, and were levelled from that point.

The ravine marked on map as "Humbug Ravine" is marked too near the railroad track. Many of the hills represented on the map are in reality much more broken than shown on the map, and have ravines running through them, as, for instance, hill marked W. C. R., No. 162. There is quite a deep gulch running through this hill, and it is again broken on the eastern portion of the hill. And again, the hill SW. of the one just mentioned is broken by ravines running into the hill on both sides. That is the general character of all of the hills on the map, they being much more broken than represented on the map.

472 I find another misrepresentation on the map, in the "south branch of Buffalo creek," as marked on the map. This branch does not run into Buffalo creek, but after leaving the road it runs in a southern direction into the prairie. The branch I speak of I have indicated by crossing its course by marks in blue ink.

Most of these hills rise quite abruptly, some of them from ninety to one hundred feet in ten chains. From the mouth of Alder creek the general direction of the base of the hills is south.

3rd. Beginning at the western boundary of the rancho and going eastwardly along the American river, where do the foot hills begin?

(Objected to by claimant's counsel as simply asking the opinion of the witness.)

Ans. I have travelled the route ever since 1849, and, for three or four years, frequently daily. I never have discovered any-

473 thing which would apprise me of the foot hills until I came to Alder creek, and on a line southwardly from that, after leaving Alder creek, if the foot hills do not commence there, there can be no distinguishable point until you reach the Sierra Nevada mountains, that is, if you do not find the foot hills there, there is no point east of there which you could designate as foot hills.

4th. In riding on horseback along and up the American river would Alder creek be a point likely to attract the attention of any one travelling?

Answer. It would. In 1849 and 1850, in riding up the American river, a person would be unable to cross Alder creek near the American river. It was very difficult at that time to cross where the road crossed with teams. It was necessary to go up the creek from ¾ of a mile to 1 mile above the point where the railroad station now is in order to cross with teams. The course was very meandering and crooked in getting down into the ravine, and also in getting out on the opposite side.

474 It is much easier now to cross them it was in 1849 and 1850, on account of its being filled up by the tailings of mines and by the washing in of the hills and also the cutting and filling of roads.

5th. If you were to cross Alder creek and then ride in a direction towards the Cosumnes river, would you consider that you were riding

over an open plain and where you could see the land for a great distance?

Answer. I would not consider that I was riding in an open plain and could not see the land for any great distance unless you got upon to the highest hills, and I think you could not see any distance beyond the point represented on the "Goddard map" as the "Western House" until you got beyond that point.

6th. Look at Exhibit No. 1 to deposition of G. H. Goddard, W. H. C., in this case, and say if the marks on and near Buffalo creek represent hills of any consequence.

475 Answer. I am not aware that there are hills as low down as that. I would not call those marks hills. There seems to be a second bottom in sections 2, 3, and 27, but the marks or dots around it do not seem to represent hills.

Cross-examination by claimant's counsel.

1st. Did you ever travel up the Placerville road as "Mormon Tavern?"

Ans. I have.

2nd. Where do you first strike what you call the foot hills of the Sierra Nevada mountains on that road?

(Above question withdrawn by counsel)

2nd. Where do you first strike on the Placerville road any hill exceeding 50 f't in height between Sacramento and Mormon Tavern?

Ans. About 8 or 10 miles from Patterson's, between the Howard House and the Western House, there is one hill which I
476 measured—it is over sixty feet from the bottom of the ravine to the summit. This hill is a short distance from the Howard House, and the hill at the Howard House, I think, is much higher. The hill I refer to is near the point marked 332 on the Goddard map—it is west of the "Western House." The road does not go over the highest points of the hill.

3rd. From the Western House, for 3 or 4 miles further up the Placerville road, until you come to the White Rock House, do you cross any considerable hills? and, if so, what hills are they, and how high are they?

Ans. There are hills more or less from the Western House to the White Rock House, but the road avoids the hills before it passes the Western House. I never have measured the heights of any of those hills on the road beyond the Western House, or around there. I have not travelled the road from Western House to White Rock House very often.

477 4th. Did you measure the elevation of any point on the Placerville road than the one you have mentioned?

Ans. On the east side of the road, and near the road north of east, from the Western House, I measured a point 259 feet above the level of the railroad, as shown on the exhibit, and marked 259 R, R, A,; and also on the west side of road, at a point marked on exhibit 209½ R, R, A.

5th. How far from the Placerville road is the point last mentioned?

Ans. I did not chain the distance; it is the hill N. W. from the road, and is ¾ of a mile or 1 mile from the Placerville road.

6th. Did you take any elevations at any point on the Placerville road, below the Western House, other than those you have mentioned?

Ans. I did on the east side of the road, about ½ or ¾ of a mile from the road. The heights were given as marked on map 193-8, A, C, R, R, and 195, A, C, R, R.

478 7th. Did you take the elevations at any point on the Placerville road, below the Western House, and other than those you have already named?

Ans. Not directly on the road.

8th. Name the points where you took any elevations (other than those you have already named) near the road, and below the Western House?

Ans. The hill between the Western House and the Howard House, marked 185–8, A, C, R, R. I took the heights of a number of hills which I did not put down, but I do not recollect the heights particularly.

9th. Whilst you were surveying there, did you notice a ridge right back of the "Monte Christo House?"

Ans. I think that south of the Monte Christo House there is a rise of ground.

10th Do you know where the widow Carr lives?

479 Ans. I do

11th. Is there a ridge back of the house? If so, designate now the map.

Ans. There is: widow Carr's house is about ¾ of a mile east of the old adobe house. There is a circular bank running around Carr's house; I should suppose it was some 15 or 20 feet higher than the bottom west of the house.

12th. Have you ever noticed a rise near the "Oak Tree House?"

Ans. I never noticed any particularly.

13th. Have you ever levelled the Placerville road, so as to know its elevations between the western boundary of the Leidesdorff ranch and the Howard House? Can you give an idea of its grade, or how much it would rise or fall to the mile?

Ans. I never have measured it, but the rise and fall would not, between those points, be more than 14 or 15 feet to the mile,

480 unless you took the elevation from the bottom of the river, to the foot of the hill west of the Howard House; I never measured the hill west of the Howard House.

14th. How can you tell that it was not more than 14 or 15 feet to the mile if you have never measured it, especially as you have stated that you were not much in the habit of travelling the Hangtown road?

Ans. I have travelled that portion of the Hangtown road frequently, and I think that the grade of the railroad does not exceed $\frac{1}{10}$ of an inch to the 100 ft. across the prairie.

15th. Does the railroad and the Placerville road run together?

Ans. They do not run together, but they run nearly upon the same plane between those points.

16th. In following up the American river, from the western boundary of the Leidesdorff ranch towards Alder creek, do you
481 notice hills upon the northern bank of the American river? and if so, state as near as you can the heights of those hills.

Ans. They vary in height; opposite Alder creek I should think that they might be over 200 feet high.

17th. When do you first strike those hills in travelling up the river?

Ans. I have generally noticed those hills when opposite the Mississippi bar.

18th. Have you ever noticed them as low down as the opposite side of the river from Farmers' Diggins?

Ans. I have noticed elevations there. I do not recollect the height, as I did not take measurements as low down as that.

19th. On exhibit Colby No. 1 there is a range of hills on the opposite side of the river marked 165 feet high, are those hills represented there correctly?

Ans. The initial point is not given on the map. If they were
482 measured from the bottom or bar of the river they are not represented correctly. From my observation they are substantially correct as far as represented, being represented only on one side.

20th. Was Buffalo creek a noticeable feature of the country in travelling up the American river in 1849 or 1850?

Ans. It was noticeable during heavy rains, but in the dry season the bed of the creek only was shown, the creek being dry.

21st. Is any other part of this map your work except the marks, words, and figures in blue ink?

Ans. None other except the correction to the course of the branch of Buffalo creek to which I have referred, and the mark of the exterior lines of the official survey as returned in this case.

22nd. When you took the elevations in the first part of April, 1861, what instruments did you use?

483 Ans. I used the common surveying level belonging to the county surveyor.

22nd. Why did you not use your own instruments?

Ans. I had not a level of my own.

23rd. Did you take directions with a chain and compass?

Ans. I did take some in that way in order to test the general accuracy of the topography of this map.

24th. Is your usual occupation that of a surveyor or engineer?

Ans. I have not made it my business since I have been in California, but have surveyed very frequently in Sacramento, El Dorado, Yuba, and Sutter counties, surveying lands and testing U. S. survey, and also taking heights.

25th. Are you now, or have you been, the president of the settlers' league, in Sacramento county.

(Objected to by counsel for U. S. as entirely irrelevant.)

484 Ans. I was president of the "Settlers' Association" in 1855, but not since; I never belonged, however, to any secret league; I never belonged to any secret political association. I am not now a member of any settlers' association, and have not been since 1855. The rules

and regulations of the association to which I belonged were published and public.

26th. Did you measure from the western line of the Jones survey to Prairie City.

Ans. I did not. I think that on exhibit Colby No. 1, the location of Prairie City should be a little farther to the east.

(The whole cross-examination about the Placerville road objected to by counsel for the U. S. as irrelevant.)

G. W. COLBY.

Deposition closed.

Subscribed and sworn to before me this 16th day of April,
485 A. D. 1861.

CUTLER McALLISTER.
U. S. Com'r.

Endorsed: Filed May 15th, 1861.

W. H. CHEVERS, *Clerk.*

486

487 *Dep. of R. C. Hopkins, on behalf of claimants.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* JOS. L. FOLSOM *et al.* } In land cases., dist. court, No. 359.—Land Com., No. 321.

Be it remembered that on this 15th day of May, A D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of the claimants in the above-entitled cause, now pending in said court, under the acts of acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

488 Present: Thompson and Irving, for claimants; A. P. Catlin, for Natoma Water Mining Co. *et al.*; U. S. att'y, for U. S.

Questions in behalf of the claimants.

Question 1st. What is your name, age, residence, and occupation?

Ans. R. C. Hopkins; lawful age; San Francisco; keeper of Spanish archives in office of U. S. surveyor general.

2nd. Examine paper now shown you, and state what it is and where it is kept.

Ans. It is the original map of the grant to Guillermo A. Leides-

dorff of land known by the name of Rio de los Americanos. It is attached to the espediente (389) of said grant, which is on file in the archives of the office of the U. S. surveyor general.

3rd. Examine the map now shown you, and contained in the transcript between pages 46 and 47 of the record from the U. S.
489 land commission in the above-entitled cause, on appeal to this court, and state what it purports or is intended to be.

Ans. It purports to be a copy of the original map spoken of in the foregoing answer.

4th. Examine the said two maps, and state whether the last-mentioned one is a correct copy of the said original; and if not, point out or describe in what respects they differ.

Ans. It is not a correct copy—it differs in many particulars: 1st. The space between the American river and a creek which is not named, on the eastern extremity of the map, in the original, is lightly shaded—the copy in the transcript does not appear to be shaded. 2nd. On the original map there are trees represented on the shaded portions of it which are not found upon the copy in the transcript. 3rd. Upon the original there is a dotted line along the south side of
490 the American river, which is not found upon the copy in the transcript. 4th. On the original the darkly shaded portion is separated from the lightly shaded portion by a finely dotted line, which does not appear upon the copy. 5th. Upon the original the stream represented as entering the American river, near the eastern border of the map, and dividing the darkly shaded portion from the very lightly shaded portion to the east of the creek, is not represented as extending so far south as it is laid down upon the copy. There are other discrepancies in spelling, &c.

5th. Examine again the said original, and state how the shading on the portion thereof lying east of the creek referred to in your last answer compares in coloring with the lightest portion of the shading lying west of said creek.

Ans. It is somewhat lighter than the portion lying near the river. It is very nearly the same shade as the lightest portion of the said shaded tract; it is perhaps somewhat lighter than the lighest portion of said tract.

491 6th. From your occupation are you familiar with the diseños usually contained in the espedientes to Mexican grants filed among the archives under your charge, as to shading and coloring on those diseños and other maps?

Ans. I am.

7th. State, from your knowledge and experience in that respect, whether the shading on said original map, east of the stream above spoken of, appears to have been made at the same time, and with the same coloring matter as that lying west of said stream.

Ans. My impression is, it was all made at the same time; inasmuch, however, as the portion lying east of the creek is of a lighter color than the portion lying west of said creek, it is impossible to say, with certainty, whether or not it was made at the same time or with the same coloring matter.

8th. State whether the shading lying east of said creek is or

492 is not dark enough to be palpably distinguishable from the unshaded portions of the map?

Ans. It is.

9th. Look at the certified traced copy of said map, annexed to the deposition of John Bidwell, filed in this case, and now marked "Hopkins No. 1," and compare it with said original, and state if it is a correct copy thereof.

Ans. Said copy appears to have been traced from said original; I presume the tracing has been as carefully and correctly done as it is possible to do the same. In the traced copy, however, I think there is less difference in the shade of that portion lying east of the creek heretofore referred to, and the shade of the lightest portion lying west of the creek, than there is in the original. The shading has perhaps been as correctly done as it was possible to do it on tracing paper.

Deposition closed.

R. C. HOPKINS.

493 Subscribed and sworn to before me this 15 day of May, 1861.

W. H. CHEVERS,
U. S. Com'r.

Endorsed: Filed May 15, 1861.

W. H. CHEVERS, *Clerk.*

Stipulation to Exhibit Hopkins No. 1.

U. S. district court.

THE UNITED STATES
v.
EXEC'RS OF J. L. FOLSOM. } No. 359.

It is hereby stipulated and agreed that the annexed exhibit, marked "Exhibit Hopkins No. 1," consisting of fourteen photographic pages, can be proved by R. C. Hopkins, esq., keeper of the archives, to be correct photographic copies of the original espediente in this case, with the exception of the diseño, of the original grant produced and filed by the claimants, and of page 11 of the book of "Toma de Razon," the originals of said espediente and book of Toma de
494 Razon now being in the custody of said Hopkins as keeper of the archives, in charge of the surveyor general of the U. S. for the State of California; and, further, that no registry of said grant produced by the claimants appears in any book of record of the former gov't, now in charge of said surveyor gen'l.

SAN FRANCISCO, *May* 15, 1861.

We admit that R. C. Hopkins would prove the facts stated in the within stipulation, but we do not admit that the facts so proven or

the documents therein referred to, are admissible as evidence in this proceeding.

THOMPSON AND IRVING,
Att'y for Claimants.
WM. H. SHARP,
Dist. Att'y for N. D. of Cal.

(Here follows Hopkins's Exhibit No. 1.)

495 *Exhibit.—Hopkins No.* 1, *filed by the U. S.—Espediente.*

Promovido por D. Guillermo A. Leidesdorff en pretencion del terreno conocido con el nombre del Rio de los Americanos.

496 No. 389.

497 Sello cuarto, dos reales.—Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA.
PABLO DE LA GUERRA.

Por aus'o del Admi'or,
GUILL'O ED'O HARTNELL.
[SEAL.]

MONTEREY, *Agosto* 23 *de* 1844.
S'rio del despacho romando previam'te los necesarios.
MICHEL'A.

Ex'mo Sor. Gobernador: Co. Guillermo A. Leidesdorff natural de dinamarca y naturalizado en la republica Mejicana ante V. E. con toda sumision y respecto, se presente y dice: Que hallandose poseedor de un gran numero de ganado mayor y deseoso á tener un sitio en propiedad para fomentarlo, he encontrado uno valdio colindante á los terrenos de Señor Sutter, segun explica el adjunto diseño que debidamente acompaña, dicho sitio es en el orillo del Rio de los Americanos y consiste de cuatro leguas de largo por el este y dos leguas de ancho por el sur, por tanto.

A. V. E suplica rendidamente que me concede dicho terrena, por lo cual recibiré merced y gracia, jurando no ser de maticia y lo necesario.

498
499 Monterey, 29 de Agosto de 1844.

GUILLERMO A. LEIDESDORFF.

Como dispone el ex'mo sor. gobernador sirvase informan el Sor. Sutter sobre el contenido de la presedenta mitancia.

Monterey fha. la misma.

MAN'L JIMENO.

Ex'mo Señor Gobernador : El terreno que se solicita está valdio como se acredita por el adjunto certificado, y tan bien demarcado segun aparees en el diseño, y en una situacion tan contigua al parage del Señor Sutter, que entiendo no haben algun incombeniente pa. que V. E. pueda consedente al interesado el terreno pretendido—si no tubiera V. E. otra cosa que disponer.

Monterey, O'bre 1o. de 1844.

MAN'L JIMENO.

F'ha id comedido.

MICHEL'R'A.

MONTEREY, 8 *de Octubre de* 1844.

Vista la peticion con que dá principio este espediente los informes que preceden con todo lo demas que se tubo presente y dever comvino, de comformidad con las leyes y reglamentos de la materia, declaro á Dn. Guillermo A. Leidesdorff por las presentes dueño en propeiedad del terreno que se halla situado á las margines del rio nombrado de los Americanos, colindante con el terreno, concedido á la coloma del Sor. Sulter y con las lomerias del oriente ; en estencion de ochocitios de ganado mayor. Librese el correspondiente despacho tomese razon en el libro respectivo y dirijase este espediente á la ex'ma asamblea departamental pa. su aprobacion. El E. S. Dn. Manuel Micheltorena, general de brigada del ejercito Mejicano, ayudante g'ral de la plana mayor del mismo gobernador comand'te g'ral é inspector del departamento de las Californias, asi lo mandó decretó y firmo de que doy feé.

JURISDICCION DEL RIO SACRAMENTO.

El terreno que solicito en este pedimiento Don Guillermo A. Leidesdorff, situado en el Rio de los Americanos por presente esta disocupado y es el que está representado en esa Mapa ; y doy este certificacion para las fines que convengan.

Nueva Helvecia, Agosto 4 de 1844.

T. A. SUTTER.

El ciudadano Manuel Micheltorena, gral. de brigada, &c. : Por cuanto D. Guillermo A. Leidesdorff, Mejicano por naturalizacion ha pretendido para su veneficio personal seis sitios de ganado mayor en la rivera del rio que llaman de las Americanos colindante con el terreno concedido á la colonia del Señor Sutter y con las lomerias del oriente : practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos de la materia usando de las facultades que me son conferidas á nombre, de la nacion Mejicana he venido en conceder el terreno mencionado sugetandose á la aprobacion de la exma. asamblea departamental, y á los condiciones siguientes.—1ª. No podrá venderlo enagenarlo ni potecarlo ; imponer censo vinculo ni otro gravamen y ni aun donarlos. 2ª. No impedira el cultivo ú otras aprovechamientos que por d'ho terreno adquieran los

indigenas de ese rumbo. 3ª. Podrá sercarlo sin perjudicar las travesias caminos y servidumbres; lo disfrutará libre y exclusivam'te destinándolo al uso ó cultivo que mas le acomodo, pero dentro de un año fabricará casa y estara habitada. 4ª. El terreno de que se hace donacion es de la estencion de que ya se ha hecha mencion. El juez que diere la posesion lo hará medir conforme ordenanza, quedando el sobrante que resulte á la nacion para los usos convenientes. 5°. Si. con-
508 traviniere á estas condiciones perdera su derecho al terreno y será demunciado por otro. En consecuencia mando que teniendose por valedero el presente titulo se tome razon de él en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey á ocho, de Octubre de mil ochocientos cuaranta y cuatro.

509

510

511 Sello primero, ocho pesos.—Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.
MICHELTOREMA.

Por aus'o del adm'or,
GUILL'O ED'O HARTNELL.

El ciudadano Manuel Micheltorena, general de brigada del ejército Mexicano, ayudante gra'l del mismo, gobernador comandante gra'l é ynspector del departamento de Californias.

Por cuanto D. Guillermo A. Leidesdorff Mejicano por naturalizacion ha pretendido para su veneficio personal seis sitios de ganado mayor en la rivera del rio que llaman de los Americanos colindante con el terreno concedido á la colonia del Sor. Sutter y con las lomerias del oriente practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuerto por leyes y reglamentos de la materia usando de las facultades que me son conferidas á nombre de la nacion Mejicana he venido en conceder el terreno mencionado sujetandose á la aprobacion de la exma. asamblea departamental y á las condiciones siguiento.

1a. No podrà venderlo enagenarlo ni potecarlo; imponer censo vinculo ni otro grabamen y ni podrá donarlo

2a. No impedirá el cultivo ú otros aprovecham'to que por d'ho terreno adquieran las yndigenas de ese rumto

3o. Podrá sercarlo sin perjudicar las travesias caminos y servi-
512 dumbres; lo disfrutará libremente, destinandolo al cultivo que
513 mas le acomode, pero dentro de un ano fabricará casa y estara habitada.

4a. El terreno de que se hace donacion es de la estencion de que ya se ha hecho mencion. El juez que diere la posesion lo hará medir conforme ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

5o. Si contraviniere á estas condiciones perderá su derecho al terreno y será denunciado por otro.

En consecuencia mando que teniendose por valedero el presente titulo se tome razon de él en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey à ocho de Octubre de mil ochocientos cuarenta y cuatro.

MAN'L MICHELT'A.
MAN'L JIMENO,
S'rio del Despacho.

514

515 Queda tomado razon de este despacho en el libro respectivo. á fojas 11.

JIMENO

516

517 Sello primero, ocho pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA.
PABLO DE LA GUERRA.

El ciudadano Manuel Micheltorena, general de brigade del ejercito Mejicano agudante, general de la plana mayor del mismo, gobernador comandante general é ynspector del departamento de las Californias.

Por cuanto D. Guillermo A. Leidesdorff, Mejicano por naturalizacion ha pretendido pa. su beneficio personal ocho sitios de ganado mayor en la rivera del rio que llaman de los Americanos, colindante con el terreno concedido á la colonia del S'or Sutter y con las lomerias del oriente practicadas previam'te las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos de la materia ; mando de los facultades que me son comferidas á nombre de la nacion Mejicana he benido en concederle el terreno mencionado sugetandose á la aprobacion de la exma. asamblea departamental y á los condiciones siguientes.

1a. No podrá venderlo, enagenarlo ni hipotecarlo, inponer censo vinculo fianza, ni otro gravamen y ni podrá donarlo.

2a. No impedirá el cultivo ú otros aprovechamientos que por d'ho. terreno adquieran los Yndias de en rumbo.

518 3a. Podrá sercarlo sin perjudicar las travecias caminos y servi-
519 dumbres ; lo disfrutará libre y esclucivamento destinandolo al uso ó cultivo que mas le acomode pero dentro de un año fabricará casa y estará habitada.

4a. El terreno de que se hace donacion es de la estencion de que yá se há hecho mencion. El Juez que diere las posecion lo hará medir conforme á ordenanze quedando el sobrante que resulte á la nacion pa. los usos comvenientes.

5a. Si centraviniere á estas condiciones perderá su derecho al torreno y será denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el presente titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey á ocho de Octubre de mil ochocientos cuarenta y cuatro.

MAN'L MICHET'R'A.
MAN'L JIMENO, *S'rio.*

Lueda tomado razon de este despacho en el libro respectivo á fojas 11. JIMENO.

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522

523 *Stipulation.*

U. S. district court N. D. California..

THE UNITED STATES
v.
JOSEPH L. FOLSOM *et al.* } No. 359.

It is hereby admitted that certain settlers herein directly represented by A. Glassell, esq., as assistant attorney, with the U. S. district attorney, have located upon the following described lands, in pursuance of the pre-emption laws of the U. S., and have so far complied with the requirements and conditions of those laws, to wit :

	Sec.	24	T.	8	N. R.	6 E.
S. E. $\frac{1}{4}$	"	28	"		"	"
N. E. $\frac{1}{4}$	"	27	"		"	"
N. W. $\frac{1}{4}$	"	"	"		"	"
W. $\frac{1}{2}$	"	34	"		"	"
N. $\frac{1}{2}$	"	16	"		R. 7	E.
S. E. $\frac{1}{4}$	"	27	"		6	"
S. W. $\frac{1}{4}$	"	26	"		"	"
S. E. $\frac{1}{4}$	"	22	"		"	"
N. E. $\frac{1}{4}$	"	33	"		"	"
S. W. $\frac{1}{4}$	"	25	"		"	"
N. W. $\frac{1}{4}$	"	36	"		"	"
E. $\frac{1}{2}$	"	26	"		"	"
E. $\frac{1}{2}$ N. E. $\frac{1}{4}$	"	35	"		"	"
N. E $\frac{1}{4}$	"	25	"	9	R. 7	E.

524 And also that certain other settlers, in like manner represented herein, hold and occupy under locations duly made under and in pursuance of the acts of the State of California providing

for the location of the 500,000 acres of land, &c., donated to the State for school purposes, &c., the following described lands:

S. W. ¼, Sec. 19, T 9, N. R. 8 E.
N. W. ¼, " 30,

A. P. CATLIN,
Attorney for Claimants.

Endorsed: Filed May 16, 1861.

W. H. CHEVERS, *Clerk.*

Stipulation.

District court of the United States northern district of California.

THE UNITED STATES
v.
J. L. FOLSOM *et al.* } No. 359.

It is hereby admitted, on the part of the above-named claimant that the charges and averments made on the part of the United
525 States, in the 1st and 2d articles of their exceptions, filed herein on the 10th of October, 1860, are true and correct.

A. P. CATLIN,
Att'y for Claimants.

Endorsed: Filed May 16, 1861.

W. H. CHEVERS, *Clerk.*

Stipulation.

In the district court of the United States, northern district of California.

THE UNITED STATES
vs.
HALLECK and *al.*, executors of, &c., of J. L. Folsom, dec'd, and others.

It is hereby admitted, and taken as proved, that the executors of J. L. Folsom, deceased, have sold and conveyed all of the lands lying above Alder creek, embraced in the survey of the rancho Rio de los Americanos, made and approved by the late surveyor gen'l, John C. Hays, and that the greater part of said land was sold in De-
526 cember, 1857, and that the Natoma Water and Mining Company, and the other parties intervening herein, claim, under title derived from said sale, and from sales made by said executors of lands above Alder creek at divers times, from February, 1856, until December, 1857.

CALHOUN BENHAM,
U. S. Att'y.

Endorsed: Filed May 20, 1861.

W. H. CHEVERS, *Clerk.*

Opinion.

U. S. dist. court, nor. dist. of Cal.

THE UNITED STATES
vs.
THE EXECUTORS OF JOSEPH L. FOLSOM, dec'd. } No. 359.—Nov. 18, 1861.

Exceptions to survey.

The grant in this case was for eight square leagues of land on the banks of the American river, bounded by the lands granted to
227 the colony of Señor Sutter, and by the ranges of hills to the east.

In the petition the tract is described as bounded by the lands of Señor Sutter, as shown by the annexed map "Said place is on the bank of the American river, and consists of four leagues in length towards the east, and two in breadth towards the south.

The decree of the board describes the land confirmed to the claimants as follows: "Beginning at an oak tree, on the bank of the American river, marked as a boundary to the lands granted to John A. Sutter, and running thence south with the line of said Sutter two leagues; thence easterly by lines parallel to the general direction of the American river, and at the distance, as near as may be, of two leagues therefrom, four leagues, or so far as may be necessary to enclose in the tract eight square leagues; thence northerly by a line parallel to the one above described to the American river; thence along the southern bank of said American river, and bounding thereon, to the point of beginning."

528 The appeal from this decree having been dismissed by consent of the Attorney General, a survey of the tract confirmed was made in May, 1857.

This survey appears to have been acquiesced in by the U. S. until September, 1858, when instructions for a new survey were issued by the executive department, in accordance with the opinion of the Secretary of the Interior. A second survey has accordingly been made, and it is now before the court on exceptions.

The claimants contend that the first survey is substantially correct and should be adopted by the court.

If the petition, the grant, and the diseño be alone consulted, the intention of the governor, and the true location of the tract would seem obvious and unmistakable. There can be no doubt that the land was to be a tract four leagues in length by two in breadth, lying on the southern bank of the American river, and commencing at the eastern boundary of Sutter's land. The position of this
529 boundary line is not disputed. The location of the tract would therefore seem certain and easy. But the terms of the decree of the board have given rise to a difficulty which, had the topography of the country been accurately ascertained, would not have occurred.

On the diseño the American river is represented as running in direction nearly east and west, until at Alder creek it turns abruptly

to the north. By the scale of the diseño, the four leagues which were to be the longitudinal extension of the grant terminate at or near Alder creek. It was therefore supposed that the two side lines would run in a north and south direction, perpendicular to the supposed course of the river, while the back line was to be run parallel to it, and in such a way as to include, when the meanderings of the river were computed, the required quantity of eight leagues.

The course of the boundary line of Sutter, which was the western boundary of the tract, was admitted to be north and south. The decree therefore directed the opposite side line, or eastern boundary, to be also run due north and south, and parallel with the western boundary.

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On making the survey, it was found that the general course of the river was not east and west, but S. W. and N. E. The side lines, therefor, if run in a north and south direction, cannot be perpendicular, as supposed, to the general course of the stream.

It has also been found that if a line be measured from the western boundary in a direction parallel to the general course of the river to a point four leagues distant from the western boundary, and through the point of termination of this line, a due north and south line be drawn for the eastern boundary, the latter will strike the river not only far above Alder creek, but far above any portion of the stream represented on the diseño For the course of the river bending abruptly to the north a short distance above Alder creek, a due north and south line drawn as described will run for a considerable distance not far from parallel with the river, and the northeastern portion of the tract will take the form of a long and narrow tongue of land, running for more than two leagues along the river, and due east from it instead of south of it, as contemplated in the grant, and of an average breadth of considerably less than a league.

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That the survey must assume substantially this form if the eastern line be run due north and south in literal compliance with the decree, must, I think, be admitted. But, on the other hand, it is plain that the tract, as surveyed, will, neither in its shape or location, resemble that delineated on the diseño, and evidently intended to be granted by the governor.

On the diseño Alder creek is represented as lying on the extreme eastern edge of the shaded portion of the map, which indicates the tract solicited. Beyond this creek the river is represented as extending in a nearly northerly direction; but the portion of the stream so represented is in length only about one-fifth of the whole of its course from the western boundary to the eastern edge of the map. But the portion of the river above Alder creek, included in the survey, is in length about 6½-16ths, or more than one-third of the whole.

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Again, the diseño represents Buffalo creek, and a very distinctly marked bend of the stream as situated about the middle of the tract; whereas on the survey it is, at the distance of a mile, less than one-third of the whole distance along the river from the western to the eastern boundary.

It has already been remarked that the intention of the governor to

grant a tract four leagues in length along the river is too clear to be mistaken. Taking the most liberal view for the claimants, we may construe the grant to mean that a tract of that length shall be measured along the river in its general course without computing the bends or abrupt elbows. Adopting, then, this mode of measurement, it is found that from the western point of commencement to the eastern termination of the survey, the distance along the river is 16 miles, or about 6 leagues; while if the whole river
533 front be measured, and the bends meandered, the distance is very considerably increased. It is therefor apparent that the survey under consideration not only extends the grant along the river to a distance much beyond what was contemplated in the grant, but that the eastern line strikes the river at a point very considerably above and to the northeast of any portion of the stream delineated on the map.

The tract, also, as surveyed, is in shape wholly dissimilar to the rectangular piece of land 4 leagues long by two wide, lying to the south of the American river represented on the diseño.

For a distance of about two leagues it is located to the east of that river, and the width of this part of the survey is at no point greater than a league, and for a considerable distance less than half a league.

But it is contended that the decree under which the survey was made fixes the eastern boundary at a due north and south line drawn parallel to the western line. That the location of that line is therefor *res judicata*, and cannot now be disturbed.

534 The decree of the board was drawn in advance of any survey, and without accurate knowledge of the course of the river or the topography of the country. The diseño was probably accepted as indicating with tolerable exactness the tract solicited; and as a north and south line would, according to the compass marks on the diseño, strike the river at about a right angle to its general course, such a line drawn at the distance of four leagues from the western boundary was naturally fixed upon as the eastern boundary of the tract. But it having been found that the general course of the river is from N. E. to S. W., and not from E. to west, as indicated on the diseño, a north and south line fails, as we have seen, to strike the river at right angles to its general course, but will, if protracted until it reaches the river, run for a considerable distance nearly parallel to it, and will strike it far beyond the most easterly limits of the diseño.

It appears to me therefor that the call in the decree for a north and south line as the eastern boundary should be construed to
535 mean the north and south of the diseño—that is, perpendicular to the course of the river represented thereon as running from east to west.

The decree itself refers to the grant and diseño for a more particular description of the tract.

If, then, the diseño indicates a tract different in form and location from that surveyed according to the description in the decree, there is an evident repugnance in the latter which is to be explained and reconciled by the court.

That neither in this case nor in any other did the board mean to

confirm the claim for any other tract than that described in the grant and delineated on the diseño is clear. And if misled by the compass marks or by any other inaccurate representation on the diseño, they have described boundaries which when run upon the ground are found to include a different tract from that described in the grant and delineated on the diseño, the error should be rectified by this court when the survey is submitted for approval.

536 It was also contended by the U. S. that the lomerias mentioned in the grant as the eastern boundary are situated within and to the westward of the eastern line as surveyed. It is, however, clearly shown by the testimony of Goddard, and the accurate profile of the country exhibited by him, that a tract four leagues long and two wide may be laid off along the southern bank of the river without passing beyond the range of foot hills mentioned in the grant as the eastern boundary.

It is also contended that the grant was in fact for six and not for eight leagues. Whatever force there may be in this suggestion, it is now too late to urge it. The quantity of eight leagues has been confirmed to the claimant, and the U. S. have recognized the correctness of the decree by dismissing the appeal from it, and consenting that the claimant proceed under it as under a final decree.

It is strenuously urged by the counsel for the claimants, and purchasers under them, that the original survey was long acqui-

537 esced in by the government; that sales have been effected and rights acquired on the faith of the admission of its correctness by the government, and that sales of public lands have even been made under the authority of the government or its agents; the purchasers under which would be injured if the survey is disturbed.

But these considerations, tho' proper to be urged to the Secretary of the Interior when solicited to approve the survey, cannot be regarded by the court when called upon under the act of 1860 to pass upon the correctness of a survey of a confirmed land claim. It is certainly to be regretted innocent parties have been injured by an incautious reliance on the correctness of a survey which, when their rights were acquired, had not received the final approbation either of the higher executive authority, or of the courts having jurisdiction over the subject. But the duty of the court when the case is submitted is clear, viz: to direct survey to be made as in its judgment it ought to be done.

It is proper to observe that the survey referred to in the foregoing opinion is the first official survey made in 1857, and approved

538 by John C. Hays, surveyor general. The recent survey made since the opinion of the Secretary of the Interior adverse to the Hays survey was delivered is admitted by all parties to be erroneous.

My opinion is that the eight leagues confirmed to the claimant should be surveyed, and located as follows: by drawing a line parallel to the general course of the American river, through the centre or main body of the tract, commencing at a point in the western boundary as established in both the surveys, and extending four leagues in length. Through the eastern termination of this line, a line is to be drawn at right angles to it, such line to be protracted until it

reaches the river, and to extend in the opposite direction until it reaches a point two leagues distant along said line from the river. From this last-mentioned point, a line or lines are to be drawn to the termination of the western boundary, as laid down on the Hays survey, in such a way as to make the area of the entire tract included
539 within the boundaries eight square leagues, and no more.

There will thus be measured off to the claimants a tract four leagues long by two wide, along the southern bank of the American, in a form not far from rectangular, and as near as may be such as the grant and diseño clearly show was intended to be given him.

Endorsed: Filed Nov. 18, 1861.

W. H. CHEVERS, *Clerk.*

Order rejecting survey, and directing new survey.

At a stated term of the district court of the United States for the northern district of California, held at the court-room in the city of San Francisco, on Monday the 18th day of November, A. D. 1861.

Present: Hon. Ogden Hoffman, district judge.

THE UNITED STATES
v.
EXR'S OF J. L. FOLSOM, dec'd. } No. 359.

540 This cause came on to be heard upon exceptions to the official survey of the land confirmed in this case, a certified copy plat whereof was filed January 14, 1860; and counsel for the respective parties having been heard, and due deliberation had, it is ordered and adjudged that the said exceptions be, and the same hereby are, sustained, and that the said survey be, and the same hereby is, anulled and set aside as erroneous

And it is further ordered that the surveyor general of the United States for California cause a new plat of location to be made without delay, in conformity with this order, and return the same, or a certified copy thereof, for confirmation and approval.

And it is further ordered that the said plat of location shall be made as follows, to wit:

The western line shall be drawn as shown on the Hay's survey. The eastern line shall be ascertained by drawing a line parallel to the general course of the American river through the centre or main body of the tract, commencing at a point on the western boun-
541 dary as established by the Hays survey, and extending four leagues in length; and a line drawn at right angles to said four league line, and extending two leagues from the south bank of the American river shall be the eastern line.

The northern line shall be the south bank of the American river by the courses and distances shown by said official plat, extended to the northern termination of the eastern line hereinbefore described.

And the southern line shall be a line or lines drawn from the southern termination of the said eastern line to the southern termenation of the said western line and conforming as near as may be to the meanderings of the American river, but on subdivi-

sion lines, so as include in said tract the area of eight square leagues of land.

And it is further ordered that a certified copy of this order be served by the U. S. marshal on the said surveyor general of the U. S. for California.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed.

U. S. MARSHAL'S OFFICE,
Northern District of Cal'a.

542 I hereby certify that I received the within order on the 19th day of November, 1861, and have this day served the same by delivering a certified copy to Edw. Conway, esq., chief clerk in the U. S. surveyor general's office.

WM. RABE, *U. S. Marshal,*
Per CHAS. E. BRAYTON, *Deputy.*

SAN FRANCISCO. *Nov. 19th*, 1861.

Filed Nov. 18, 1861.

W. H. CHEVERS, *Clerk.*

Order granting ten days' time to file petition for rehearing.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 27th day of November, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v. } 359.
EXECUTORS OF J. L. FOLSOM, deceased.

543 And now, at this day, on motion of A. P. Catlin, esq., it is ordered by the court that the claimants and intervenors herein have ten days' further time to file a petition for a rehearing.

Endorsed: Filed November 27, 1861.

W. H. CHEVERS, *Clerk.*

(Here follows plat, marked original, page 544.)

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545 *Order allowing ten days to claimants to submit petition for rehearing.*

United States dist. court for the northern district of California.

THE UNITED STATES
v. } 359.
THE EXECUTORS OF J. L. FOLSOM, dec'd, *and al.*

On motion of the attorneys for the claimants and intervenors, it is ordered that they have ten days from the commencement of the next

term of this court to present their application to reopen and set aside the decree of this court entered on the 18th instant, and that in the mean time all proceedings under said decree be suspended.

SAN FRANCISCO, *Nov.* 30, 1861.

Endorsed: Filed Nov. 30, 1861.

W. H. CHEVERS, *Clerk.*

546 *Petition for rehearing.*

U. S. district court for the northern district of California.

THE UNITED STATES. }
vs } No. 359.
THE EXECUTORS OF J. L. FOLSOM AND OTHERS. }

The claimants and intervenors respectfully petition the court to reopen and set aside the late order of the court directing the survey in this case, for the reasons herein set forth:

1st. Because they have discovered since the said order was made that upon the 23rd day of February, A. D. 1857, this court affirmed the said claim, upon appeal from the board of land commissioners, after full argument and hearing from counsel on part of the United States, in opposition to the form of the tract of land as described by the boundaries established by the land commission.—(*Vide* affidavit of A. P. Catlin and A. C. Peachy hereto annexed.)

547 2nd. Because they believe that the court in its late decision did not take into consideration the fact that the executors of J. L. Folsom, dec'd, had, after the affirmation of said claim, sold to intervenors all of the land embraced in the Hays survey, lying above Alder creek, by the specific metes and bounds of the said Hays survey, and that the consequence of fixing the eastern boundary according to the late order of this court would be to take away from intervenors about six thousand acres of land, and give unto the said executors an equal amount along the southern side of the tract, thus enabling the said executors to receive about 6,000 acres more of land than the grant calls for, and leaving the said purchasers remediless in the premises.

3rd. Because it was not considered by the court that the above sale was ordered by the probate court having jurisdiction of said estate, upon the faith of said confirmation, and the dismissal by the United States of further appeal therefrom, and the entry of a final

548 decree confirming said land above Alder creek to the said estate; and that the said purchasers bought said lands upon the same faith and credit; and that all these facts appear in evidence in this case.

4th. Because the court in its late opinion was in error in supposing that the board of land commissioners made the said decree in advance of a survey, or in ignorance of the topography of the country; because it appears by the evidence of John Halls, John Bidwell, John A. Sutter, and A. D. Patterson, that a survey had been made, and that the said board were informed of the topography of the country.

5th. Because the court overlooked the evidence of Willard Buzzle, and John Halls, which shows that the original grantee located and

occupied the lands above Alder creek, which are embraced in the said Hays survey, and which are within the natural calls of the grant.

549 6th Because your petitioners, who originally were settled upon lands above Alder creek, covered by the said Hays survey, in good faith, opposed the said survey, and the decree under which the same was made, both before the surveyor gen'l and before this court, in 1855, and 1856, and 1857, and used all the means known to the law in opposition thereto, until the final confirmation of said decree and approval of the survey.

7th. That after said confirmation, your petitioners purchased of said executors all the lands lying above Alder creek, according to th lines of said Hays survey, in good faith, and because this court had, after all their opposition, decreed that said land was part and parcel of said grant.

8th. Because petitioners were induced, and, for the purpose of securing safety and title to their possessions and improvements, were compelled by the acts and doings of the United States, above

550 set forth, and other public acts appearing in evidence, (such as publishing in its reports of land surveys that the said Hays survey was a final and approved survey, and offering for sale the public lands immediately adjoining said survey on the south and east,) to purchase said lands at great cost.

9th. Because, by reason of said purchases, great improvements and properties have grown up depending upon said title; suits at law and in equity have arisen and been adjudicated upon said title; several of your petitioners have, in the district court of the sixth judicial district of California, and in the supreme court of said State, upon appeal, recovered judgments for the possession of lands so purchased as aforesaid.

10th. Because the court has violated its own rule of construction in not applying the north and south of the diseño to both sides of the tract instead of only to one, in consequence of which inconsist-

551 ency, the tract does not, as the court seems to have intended that it should do, measure four leagues along the general course of the river.

11th. Because the court expresses the opinion that the intervenors ought to have made known to the Secretary of the Interior all their equitable claims in the premises when that officer had the said Hays survey before him, when, in fact, the said survey was considered and rejected by him upon ex parte evidence and false affidavits, supported by a false copy of the diseño, and without any of the claimants or intervenors having notice or information of the proceeding before him; and the said survey was brought before him in a secret and fraudulent manner; and the action of the Secretary of the Interior therein was illegal and arbitrary, and without any authority whatever, and in direct conflict with the decisions of the U. S. Supreme Court, and therefore in nowise binding upon your petitioners.

12th. Because the court has, by its late decree, exercised appellate power over the former decree, whereas the only authority the

552 court has is a supervisory power over the surveyor gen'l. The

old decree does produce a form approximating to the grant; its lines close and are consistent with each other. The question is not can we now, by changing the lines of the old decree, produce a better form, or can we improve upon the judgment of the board of land commissioners in this matter; that tribunal had jurisdiction over the boundaries, (vide Fossat case,) and exercised it fully in this case, and produced a form, whether perfect or not cannot now be enquired into.

13th. The evidence before the commission shows that the boundaries were disputed by the United States, and that the United States claimed to have the eastern boundary run even farther up the river than the board allowed it to go by its decree. The government was then represented by its regularly appointed agent, but now it is represented by the attorneys of private parties, and through them,
553 in this proceeding, occupies a position antagonistic to its own interests, and contrary to its own policy, and inconsistent with all its former claims and acts in the case.

In addition to the above statement of points, your petitioners respectfully invite the attention of the court to the following grounds of their petition, and to the affidavits annexed:

The decision of the court appears to be mainly based on two assumptions, neither of which, in the opinion of your petitioners, can be sustained, either by the record or the facts of the case.

The first is that it was the intention of the grant to give four leagues in extent along the river, or according to its general direction.

There is nothing whatever in the espediente, the grant, or the diseño, to warrant this conclusion. The grant simply describes the land as eight leagues in extent on the American river, and bounded by (colindante con) the land conceded to the colony of Señor
554 Sutter, and the lomerias on the east; but the petition, which, according to the decisions of the Supreme Court and the uniform rulings of your honor, is an essential element in ascertaining the land intended to be granted, describes it as being bounded by the lands of Señor Sutter, as explained by the annexed map, (diseño,) and then goes on to say: "The place is situated on the bank of the American river, and consists of four leagues in length to the east, and two leagues in width to the south." The diseño, according to the scale, represents a tract four leagues from west to east, and two leagues from north to south, Sutter's boundary forming the base of the first, and the American river of the latter. The petition distinctly refers to the diseño only to ascertain the oak tree starting point. It says, "adjoining the lands of Mr. Sutter as laid down upon the map accompanying," and then adds, "the place is situated" &c., as above described.

These constitute the whole description in the original title-papers; and how from this description the inference can be drawn
555 that it was the intention of the grant to give the four leagues along the American river, or according to its general direction, is difficult to be understood. On the contrary, the description in the grant, as explained by the petition, expressly makes the tract four leagues in length to the east from Sutter's boundary, and not according to the general course of the river. Now, the only point then

known as Sutter's eastern boundary was the oak tree on the American river; and drawing a line east from that point four leagues fixes the extent of the grant in that direction; and then by a south line from the oak tree two leagues, and a like south line from the river at a point perpendicular to the end of the four-league line, closing with the back line at such point as to make the quantity eight leagues, would be a literal compliance with the description, and was obviously what was intended by the board. The lines as fixed by the board will stand the strictest scrutiny, and they demonstrate conclusively that the
556 board perfectly well understood the form of tract which those lines would produce when run upon the ground. The board fix the starting point, the course, and the length of the first line. They fix the *course* of the eastern boundary line, *but they do not fix its length*, which shows that they knew it would intersect the river above the bend, and might therefore be necessarily longer than two leagues, especially as they direct that the back or southern boundary line shall "keep as near as may be two leagues" from the river. Now, if the third subdivision of the back line of the Hays survey were placed a little further south, and the eastern boundary line thereby drawn a little further to the west, it would perhaps more closely adhere to the decree of the board.

But the incongruity between the location as established in the opinion and decree of this court and that set out in the decree of the commission has let the court into another assumption equally untenable with the first.

The court, while ostensibly construing the decree of the commission as to its true meaning and intent, changes one of its calls in a
557 most material particular: that is, where the decree calls for a due south line, this court decides that they meant a southeast line, and this not from any repugnancy between the lines as called for in the decree and the other parts of the description contained in it, but because this court is supposed to have had lights before it that the commission had not, and that if the commission had acted under the same evidence, they would probably have fixed the line as now established by the decree of this court. To say nothing of the danger of such a broad rule of construction, by which the final determination of judicial tribunals may be raised at the pleasure of the judge who may be called upon to adjudicate the rights of parties acquired under them upon the ground that other evidence is before him, or that he, upon the same evidence, would have decreed differently, and the utter absence of all authority for such a rule, the presumption is, from the evidence in the record, that the commission acted advisedly upon the subject, and were fully aware of the effect of their decision when
558 they rendered it. But if any doubt exists in the mind of the court upon this subject, it will be entirely removed by the affidavit of R. Aug. Thompson, late a member of the board of land commissioners, and who prepared the opinion and decree filed in the case. From that affidavit it will be seen that the assumption of the court that no survey had been made, and that commission acted in ignorance of the true course of the river and the topography of the country, is founded in error. On the contrary, it appears that the commis-

sion had before them the plat of a survey of the land as claimed by the claimant, by which the east and west lines of the tract were made to run southeast instead of south from the river, and that those lines were deliberately changed by the commission to a due south course in order that they might conform to the description in the grant as explained by the petition of the grantee, and the rules of location as established by the Mexican ordinances, (*vide* art. 5 of the Ordinances de Tierras y Aguas, pages 1855–87, ed. of 1856,) and
559 extracts from the same annexed hereto.

Independent, however, of the facts shown by the affidavit of Mr. Commissioner Thompson, the court appears to have overlooked the deposition of John Halls, a surveyor, who made a thorough survey of the tract, and meandered the river from the oak tree to the forks of the river, for the original grantee; and though said witness was not before the commission, it will be presumed that the board did, rather than that they did not, know of said survey.

The Goddard maps and profiles, also, while designed more particularly to show how the Secretary of the Interior had been imposed upon by ex parte and false maps and affidavits, serves to show that the witnesses before the land commission, as far as they went, correctly informed the board concerning the topography of the country.

The conclusion, therefore, of the court, that the diseño describes a tract different from that surveyed under the decree of the commission, or that the commission in their decree described boundaries
560 which, when run upon the ground, are found to include a different tract from that described in the grant and delineated on the diseño, is unwarranted by the facts and evidence, or, at most, would only indicate a difference of opinion between the judge of this court and the commission, which, after the decree of the board has become final, does not in this proceeding authorize the judge to change the decree

The court has also in its opinion, either through inadvertence or forgetfulness, fallen into another most material mistatement of fact. The court says in its opinion: "On the diseño Alder creek is represented as lying on the extreme eastern edge of the shaded portion of the map which indicates the tract solicited." This is true so far as the copy of the diseño in the transcript is concerned, but it seems to have escaped the recollection of the court that the original diseño was introduced in evidence on the trial and inspected by the court, and a correct copy, shaded like the original, annexed to the deposi-
361 tion of Mr. Hopkins, from which it appeared that the original was shaded from Alder creek to the extreme eastern edge of the map, and embracing in the shaded portion of it the whole course of Alder creek for one league from the mouth and the tongue of land to the extent of a league lying between the river above Alder creek and the eastern limit of the map. The diseño shows that the land on the eastern or upper side of Alder creek, for a league in extent from its mouth and for a league in extent on the river, was granted.

It is possible that this misconception of the evidence has led the court into another error, where it states that "if a line be measured from the western boundary in a direction parallel to the general course

of the river to a point four leagues distant from the western boundary, and through the point of termination of this line a due north and south line be drawn for the eastern boundary, the latter will strike the river not only far above Alder creek, but far above any portion of the stream represented on the diseño."

The diseño represents the American river as bending north a
562 short distance above Alder creek, and then turning east to the eastern edge of the map. Now, a line drawn four leagues parallel to the general direction of the river from the oak tree starting point, and a line north and south cutting the extremity of such line, would strike the river near the eastern end of Negro bar, and include the long narrow tongue of land referred to in the opinion Now, if this long narrow tongue of land is embraced in the descriptions in the grant and diseño, (and that it is palpable to the eye,) then it must be included in the survey, even if it does not form an exact and perfect parallelogram.

But the court seems to have ignored entirely the description contained in the grant itself, which makes the lomerias the eastern boundary, and makes the diseño, (which is simply a rough hand sketch made from the eye alone, without measurements,) and the scale of distance therein, which were evidently guessed at, the controlling evidence in fixing the location. In doing this the court has clearly gone counter to the well-established principles of law, that in
563 all questions of boundary that which is most certain shall prevail over that which is vague and uncertain. This rule of law, and the decisions under it, in relation to the weight and importance to be attached to plats and maps referred to in the grant, have reference to accurate plats of surveys actually made on the ground by a competent surveyor, and in such cases they control the descriptions in the grant only when the latter are vague and uncertain and the plat furnishes a more certain description ; but when a call of the grant in any particular is certain and the map vague and uncertain, it is apprehended that not only according to the principles of law, but to the dictates of common sense, the former would control the latter.

Now, in this case the grant calls for a great fixed natural object—to wit: the lomerias—as its eastern boundary, and it is admitted that the Goddard maps and profiles and evidence clearly establish the position of the lomerias as several miles east of the line contended for by the claimants. If, then, in making their location four
564 leagues east from the Sutter boundary and two leagues south from the river, as called for by the petition, the eastern line should fall west of the lomerias, it would be clearly within the description in the grant, and not outside of it, as stated in the opinion. The conclusion, therefore, upon which the court bases its opinion, that the description contained in the decree of the land commission embraces other lands than those described in the grant, falls to the ground.

It clearly appears, therefore, that the board of land commissioners were not misled by the compass marks or by any other inaccurate representation upon the diseño. The diseño is admitted to be not only full of inaccuracies, but full of the want of many essentials.

The manner of sketching the diseño, which was prepared by Sinclair upon the information acquired by a ride from the adobe house in an eastward course to Alder creek, afforded but little opportunity to be correct—the scale least of all be relied on, because the author
565 merely guessed at distances. The point of intersection of Alder creek with the river is not accurately represented. If we correct the diseño by removing the mouth of Alder to its proper position, and make the distance from thence to the oak tree compare with the scale of distances, there will be a proportion of land delineated above Alder creek equal to that on the Hays plat.

But what your petitioners contend for is that the board did consider the inaccuracies and the lack of certainty in the diseño by the light of evidence before them, and by the rough hand sketch character of the paper itself, and made a decree accordingly, which decree this court has no power to revive.

But if this court has the power to revive this decree as to the boundaries, and to establish new boundary lines under its authority of construing the true meaning and intention of the decree, (and this we emphatically deny,) we contend that the court has been inconsistent in its own rules of construction, in not erecting both
566 the east and west boundary lines perpendicular to the river, instead of merely fixing one of them in that manner. If the north and south of the decree must be construed to conform to the known erroneous north and south of the diseño, the construction should be applied to all parts of the tract. Even admitting that the board were misled by the compass marks of the diseño, it can't be denied but that they intended that the E. and W. boundary lines should be parallel, and that if they intended that one line should be perpendicular to the general course of the river, they intended the other should be also. The Sutter boundary line was never established nor admitted by the parties any farther than that the oak tree was the initial point.

Thus far we have endeavored to show that the court has erred in its views of what is exhibited by the petition, grant, and diseño, and other evidence, and to show that the land commissioners committed no error, either in judgment or by mistake or misconception, in their decree respecting the boundaries.

567 Your petitioners further urge that the court has overlooked and neglected to give sufficient weight to the principal points urged by counsel for claimants, to wit:

That this case being one in which the land commission not only passed upon the validity of the title, but also declared the boundaries and located them by clear and unmistakeable metes and bounds, and courses and distances, nothing now remains to be done except for this court, under the power given it by the act of 1860, to see that the surveyor runs the line upon the ground correctly. In order to do this, the court must understand the decree; and the power of construction is necessarily implied, and is to be exercised according to the necessities of each case. In this case it is not pretended that there is any difficulty in understanding the decree, or that its lines are inconsistent or repugnant with each other, and consequently the lines

close and form a survey, and no difficulty is experienced in determining whether a plat is correct or not, and if incorrect, in
568 what particulars it is so.

The act of 1860, we may admit, gave the powers which may be necessary to enable the court to finish a survey; and so in a decree which is incomplete in its description of the land the court would finish the work of description, or in a decree which is vague or uncertain, or one which gives lines which will not close or are repugnant with the other parts of the description, the court, in order to give effect to the decree, must reconcile these difficulties by means of an exercise of this power of construction

In such cases as the land commission or the court did not find boundaries in whole or in part, the decrees, though purporting to be final, were not actually final, and therefore jurisdiction yet remains in the court to find and complete those boundaries. This is what was held by the Supreme Court in the Fossat case. And it is only in those cases where the board or the district court omitted to find the land that the jurisdiction continues until that duty is performed.
569 In such cases as the board acted upon the boundaries and decreed upon them the decree is final.

If the decree omitted boundaries, then it is only final as to the matters upon which it did pass. If the decree gives boundaries, but gives them in an imperfect and inconsistent manner, then still the jurisdiction is exhausted; but this court in this proceeding is obliged to resort to construction in order to carry out the duty imposed upon it of seeing that a proper survey is made.

Formerly, under the act of 1851, the surveyor gen'l was under the necessity of exercising this power of construing the intention and meaning of decrees in cases where they were vague or uncertain. It became necessary for him in order to make a survey, to give certainty and completeness to that which was before uncertain and incomplete.

The court in this proceeding is bound, as we conceive, to carry into effect the terms of the decree precisely as the land commission would be bound in their decree by the terms of the grant. If the
570 terms of the grant were vague and uncertain, then the land commission would necessarily have a certain discretion and latitude in defining the boundaries in its decree of confirmation. If, however, the terms of the grant were fixed, certain, and determinate, then it will not be pretended that the land commission could be less fixed, certain, or determinate in their decree.

The court will recollect that the jurisdiction which it now exercises is a semi-executive duty. It now exercises, by the act of 1860, the powers formerly conferred upon the surveyor gen'l by the act of 1851.

It would not be pretended that the surveyor gen'l could have departed in any respect from the terms of the decree where it was practicable to execute the same. If, for instance, the decree had fixed a certain line, the surveyor gen'l was bound to make his survey in precise conformity to that line. If the decree had been imperfect in that respect, or had left the boundary uncertain, then, necessarily, in
571 discharging the duty imposed upon him by the law of running

the line, he would have been compelled to have exercised his discretion so far as that discretion was uncontrolled by the express terms of the decree.

The decree of the land commission is like any other judgment. "It is a final determination of the rights of the parties in the action or proceeding." Wherever the decree, then, has fixed any one or more boundaries or parts of a boundary, the rights of the parties are necessarily fixed and determined by the decree to that extent at least. It is a judicial determination, which can only be reversed in the mode prescribed by law—by a rehearing in the nature of a new trial, or by appeal.

The supreme court of the State of California, in the case of "The Natoma Water and Mining Co. *vs.* Clarkin & *al.*," 14 Cal. Rep., pages 550–51, which was an action of ejectment for land in this very grant, decided that the pl'ffs were entitled to recover upon the decree of final confirmation in this case for any land which they held
572 under J. L. Folsom, which was embraced within the lines named in that decree.

Upon what principle did the court proceed in making this decision? Why surely it was upon the ground that whatever was adjudicated in the decree was res adjudicata; that all those matters which had been litigated were merged in and settled by the decree. Now, why, we ask, when the decree settles the boundary, is it not as to that matter as completely res adjudicata as the question of the validity of the grant?

It will not be denied that the land commission had jurisdiction by its decree to fix and settle precisely and definitely how the boundaries should be. This power was exercised in numerous instances before the commission, and, indeed, in many of the cases the question of the boundaries was the principle subject of controversy before the board.

In this case the boundaries before the land commission were the subject of much contention between the United States and the
573 claimants. Before the board the United States attempted to defeat the whole claim upon the ground that the land, as described in the original title-papers, was so uncertain that it could not be located. Almost all the witnesses were questioned respecting the boundaries, and it was owing to this controversy that the board adopted so particular a description of the boundaries, for the very purpose of settling that branch of the case.

The supreme court of this State have reiterated the same principles in numerous other instances, and the attention of this court is invited to an examination of the opinions of that court in the following cases: 14 Cal. Rep., 550, 551; 16 do., 550, 551. Extracts from the opinions in said cases are annexed hereto.

It is impossible to reconcile the decisions of the supreme court of Cal. in these cases with the principles decided in the cases above mentioned.

It is evident that the decree would have been rejected as evidence in the case of the Natoma Co. *vs.* Clarkin and al, if the court had considered that, as to what the board had determined, it was
574 still "in fieri," and not a final determination of the rights of

the parties to the proceeding. It is plain that if the principle upon which your honor has proceeded in this case be adhered to, the decrees of the land commission and of the district courts can no longer be regarded as evidence in actions of ejectment. These decrees have in numerous instances been used in all the courts of California in actions of ejectment, and numerous recoveries have been had thereon.

The supreme court of Cal. have always held that these decrees, to the extent that they determined the validity of the title or fixed the boundaries, were conclusive.

The effect of your honor's decision will be to unsettle the law, and to compel parties to the expensive and often difficult task of proving ab initio the grants in all of those cases where no patents have been issued, and where, after many years of expensive litigation, they have obtained a decree settling the very question in dispute.

575 In the very case above referred to we have an illustration of the hardship of the rule laid down in the decision of your honor. The pl'ff in that case, one of the claimants in this holding under J. L. Folsom, after he, Folsom, had obtained a decree, settling the very question in dispute between himself and the government, introduces that decree in evidence against the defendant in all action of ejectment three years ago, and obtains the decision of the supreme court of the State, that the decree is conclusive evidence of his title to the land claimed. Now the defendants in that case appear in this court, and appearing on the part of the government, obtain an order locating the land in an entirely different form from that described in the original decree, and thereby excluding the land in controversey in the suit mentioned from the grant.

This decision of the supreme court in Natoma Co. *vs.* Clarkin and others, is a leading case, and is a precedent upon which numerous decisions are founded. It has rec'd the universal sanction of the

576 bar, and is acted upon as the settled law of California.

In consideration, therefore, of the grounds herein set forth, your petitioners respectfully pray that the said order or decree be reopened and set aside, and a rehearing ordered.

R. AUG. THOMPSON,
Attorney for Claimants, and of Counsel for Intervenors.
A. P. CATLIN,
Att'y for Intervenors.

Translation of articles 5 *and* 8 *from the rules prescribed by the "Ordenanzas de Tierras y Aguas" for the measurement of lands, cited above, page* 14.

ART. 5. In the "Criaderos and Sitios" the measurements are always to be made from east to west and from north to south, unless there should be some agreement between the parties to make the measurement in some other way; that an agreement having been made between the parties *between the parties* interested, the measure-

577 ment may be made in the form agreed upon. It is to be observed, also, that if at the time of measuring the lands the agreement should be, that in said sitios the measurements should not be

made from east to west nor from north to south, it is ordered that this does not include the mode of measuring from the centre.

ART. 6 In the measurement of lands which are not "cabalerias" nor such as be suitable for the growth of grain, (that is, lands that are designed for the raising and pasturage of stock,) the measurements are to be made over rocks and rivers, including those which may be valueless, ascending and descending mountains and hills and crossing ditches and arroyos; wherefore it is ordered, that in places abounding in thickets of undergrowth paths be opened so that the measurements can be made by running the cord in a direct line. It is to be observed, however, that all those rules, given principally for cases in which the measurements are to be made for the first
578 time of lands to be granted or divided, are limited and divided when they relate to a measurement already made, since in that case everything must be done in accordance with the titles which serve as a guide.

ART. 8. If the grant of lands be made on the sea-shore or on the banks of any river or large lake, such shore shall form the boundary on one side of said lands, from whence the measurements shall commence.

Natoma Water and Mining Co. vs. Clarkin and al., 14 *Cal. Rep.*, *pages* 548, '50, '51.—*Extracts from opinion of court.*

"The grant, with the accompanying papers, describes the land as lying on the American river adjoining land previously granted to the colony of Sutter. The decree of the commission confirms the claim under the grant to a particular tract, describing it with specific boundaries." * * * * * * *

579 "On what ground the final decree of the commission and the order of the district court were held to be irrelevant testimony, we are unable to perceive. The right of the plaintiffs to recover is based upon the grant of the Mex. gov't. The decree of the comm'n, rendered final by the withdrawal on the part of U. S. of any appeal therefrom, is not only conclusive evidence of the validity of such grant and of its recognition by the U. S., but also of the location of the specific quantity granted. Against its effect neither the gov't nor any parties claiming under the gov't could ever assert any rights. So far, then, from being irrelevant, the decree, with its specific boundaries, and the order of the dist. court granting leave to the claimants under the stipulation of the officers of the gov't to proceed thereupon as upon a final decree, were on the highest sense relevant and material. They were, in fact, taken in connection with the grant, conclusive of the right of the pl'ff to recover, provided the premises in controversy were within the designated boundaries.

"A patent of the U. S. could have no greater effect upon the title. * * * * * * * *

580 "So far as the title is concerned, the boundaries of the land being given—its segregation, in other words, from the public

domain being made by the decree itself—nothing further could be required."

Mott vs. Smith, 16 *Cal. Rep.*, *pages* 550, (*bottom*,) 551, (*top.*)—*Extract from opinion.*

"Assuming, then, as a matter of fact, that the grant was issued by Sutter without authority, the answer to the objection taken on that ground is perfect. It had been decided otherwise by the tribunals established by the United States for the express purpose of ascertaining and determining the validity of grants claimed to have been issued to individuals by authority of the Mex. gov't. This particular grant those tribunals have passed upon and pronounced valid, entitling the claimant to a recognition and confirmation of his claim thereunder. The U. S. has its officers to take care of its interests, and to conduct legal proceedings in its behalf before the tribunals of the country. The highest officer for that purpose in the Union,
581 with supervision over proceedings in each district, is the Attorney Gen'l; the highest officer for a particular district, subject to such general supervision, in the dist. att'y. Both of these officers have consented, on the part of U. S., that the appeal from the judgment of the l. comm'n, affirming the validity of the grant to Gutierres, shall be dismissed, and upon such consent the U. S. dist. court has acted, and dismissed the appeal then pending, and ordered that the claimant have leave to proceed upon the decree of the commission as a final decree; and these matters also appear by the recitals of the patent. The validity of the grant is therefore the law of that case. It can never be questioned again by the government or by individuals claiming under the government, either collaterally in an action of ejectment or directly in any other form of proceeding. It is a closed question for all time."

In the United States district court for the northern district of California.

THE UNITED STATES
vs.
EXECUTORS OF J. L. FOLSOM, dec'd, and *al.* } No. 359.

582 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

R. Aug. Thompson, being first duly sworn, deposes and says that he was a member of the late United States land commission to ascertain and settle private land claims in the State of California; that as such commissioner he prepared the opinion and decree in said cause. He further states that in the examination of said cause as commissioner, he had before him the plat of a survey of the lands therein claimed, showing the boundaries of the grant as claimed by the claimant, J. L. Folsom. He further states that the copy of the plat herewith filed, and marked "Exhibit A," is, to the best of his recollection a true copy of the plat filed in the land commission, and which was examined by him.

He, however, well recollects that the Exhibit A is in all material respects a substantial copy of said plat; that the sinuosities and courses of the American river as there laid down are substantially the
583 same as those laid down on said plat. He furthermore states that he distinctly recollects that on the plat before him the the eastern and western boundaries ran from the American river in a southeasterly direction, and that in the decree the said lines were changed from a southeasterly to a due south direction, after a careful examination and deliberation in order to make them conform to what was considered by the said board as the true calls of the grant, and the requirements of the Mexican ordinances, according to which the boundaries were to be established.

He further states that the said decree was drawn with a full knowledge of the courses of the river as delineated on the said plat and Exhibit A, the topography of the country and the position of the "lomerias," called for in the grant as the eastern boundary, as shown by the testimony then in the case. Deponent further states that when he was first employed in this case on the matters of the survey about two years since, he was surprised at not finding
584 a copy of said plat in the transcript, and so vivid was the conviction on his mind that such a plat was before him when he examined the case as U. S. land commissioner, that he caused a diligent search to be made for the same among the records of this court and in the archives of the United States surveyor general, but was unable to find it, and cannot account for the fact that a copy of it was not filed with the transcript in the case; but he is positive that when the original file of papers was laid on his table in the land commission, it was accompanied by said plat, and that it was regarded by him as part of the record, and formed an essential element in determining the boundaries and drawing up the decree.

R. AUG. THOMPSON.

Sworn to and subscribed November 30, 1861, before me.

W. H. CHEVERS,
U. S. Com.

(Here follows map, marked original, page 584.)

585 U. S. district court, northern district of California.

THE UNITED STATES
vs.
THE EXECUTORS OF J. L. FOLSOM, dec'd, and al.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Amos P. Catlin, being duly sworn, says that he is one of the claimants in the above entitled cause, and is also attorney for others of the claimants therein; that this cause was pending in this court, upon appeal from the board of land commissioners, in the year A. D. 1856, and that upon the 27th day of February of that year the cause was, in pursuance of the order of this court, argued and finally submitted to the court that upon said argument the U. S. district at-

torney for this district, Wm. Blanding, esq., and Calhoun Benham, esq., appeared on the part of the United States, and Archibald C. Peachy, esq., appeared on the part of the executors of J. L. Folsom, dec'd, the claimants.

586 That Calhoun Benham, esq., appeared in behalf of this deponent, and of several other persons, who were then permitted by the said U. S. district attorney to appear, by their said attorney, to appear and contest the confirmation of the decree of the board of land commissioners.

That at that time this deponent and the said parties represented by him, and by said Calhoun Benham, were not interested as purchasers of the land which they now claim through purchases made after said decree was confirmed by this court.

That upon the aforesaid hearing and argument of this cause the only ground of objection urged and taken against the confirmation of said decree, by said Calhoun Benham, esq., was that the decree of said board was erroneous in its description of the boundaries of the said grant; that in order to make said objections appear to the court the U. S. surveyor general, by one of his deputies, appeared in open court and produced for the inspection of the court the original

587 grant, espediente, and diseño, and a plat of the original survey, known as the Hays survey, which survey had then been made as a preliminary survey in the month of December previous thereto, and which survey afterwards, on the 30th day of May, A. D. 1857, was approved by the surveyor general as the final survey and plat of said grant.

That the said Calhoun Benham then and there urged that the boundaries, as laid down in said decree, and as delineated upon said preliminary survey, and the plat thereof, should be modified and changed and made to conform to the original title-papers and the documents contained in the expediente, he then contending that said decree described the tract in a form different from that by which it was intended to be granted. That, on the other hand, it was contended by Mr. Peachy that said decree was in all respects in conformity to the grant.

That upon said argument and hearing the said grant, espediente, diseño, together with said plat of said preliminary survey and

588 the depositions contained in the transcript, were referred to and examined at length, both by the said attorneys and by the court.

That upon the conclusion of said argument and hearing the said court took the case under advisement, and upon the 23rd day of February, A. D. 1857, decided the cause and confirmed the said decree.

That thereafter, upon the 30th day of April, A. D. 1857, the said court caused a final decree to be entered that the claimants have leave to proceed under the decree of the land commission theretofore rendered as the final decree of this court.

That on the 29th day of April, A. D. 1857, the U. S. district attorney, by the order of the Attorney General of the U. S. before that time made, stipulated that no further appeal should be taken in said cause. That thereupon, upon the 30th day of May then next ensu-

ing, John C. Hays, the U. S. surveyor general, approved the said survey and the plat thereof as the final survey of said tract of land.

589 That thereafter, at sundry times in the year 1857, this deponent, and numerous other parties who are now claimants herein, purchased for valuable considerations town lots in the town of Folsom, and large quantities of land from said executors, and others claiming under them, embraced within the boundaries of the said Hays survey, and have expended large sums of money and much labor in permanent improvements upon the same.

Deponent further says that the reason the said second confirmation in the district court was not presented to the court upon the late hearing of said cause, is because it was not known to him, or to his associate, R. Aug. Thompson, that said claim had been confirmed by this court; but they supposed that the appeal from the land commission had been dismissed before this court had decided the case, and deponent, upon the argument, so stated the fact to be; whereas, in fact, the appeal from the land commissioners to the district court

590 never was dismissed by the Attorney General, but that officer agreed that no appeal should be taken to the Supreme Court.

Deponent further says that the claimants herein who purchased lands, as above set forth, in the town of Folsom, and in that vicinity, upon that portion of said tract excluded by the late order of this court, purchased the same upon the faith of said final decree in good faith, believing that said lands were finally decided by the U. S. courts to be part and portion of said grant; that they had been for a long time before settled upon said lands, claiming them as public lands in good faith, and opposing by all legal means the confirmation of said lands to the said executors; and that after said decision, which was published in the newspapers, they, in good faith, purchased them, as above set forth.

Deponent therefore asks for a rehearing of the above entitled cause, upon the grounds above set forth.

AMOS P. CATLIN.

591 Subscribed and sworn before me this 27th day of November, A. D. 1861.

W. H. CHEVERS,
U. S. Comm'r.

U. S. district court, northern district of California.

THE UNITED STATES
vs.
THE EXECUTORS OF J. L. FOLSOM, dec'd, and *al.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Archibald C. Peachy, being duly sworn, says that he has read the foregoing affidavit of Amos P. Catlin, and that the facts therein stated respecting the argument of the above-entitled cause, when the same was upon appeal from the land commission before said district court,

and respecting the examination of the original title-papers, and
592 maps, and surveys, are true, to the best of his knowledge and belief; that as to the other facts stated therein, of which deponent is not represented as having personal knowledge, he believes them to be true upon information.

ARCH. C. PEACHY.

Sworn to and subscribed Nov. 28, 1861, before me.

W. H. CHEVERS,
U. S. Com.

U. S. dist. court, northern district of California.

THE UNITED STATES
vs.
THE EXECUTORS OF J. L. FOLSOM, and others. } 359.

We, the undersigned, attorneys of record in the above-entitled cause, do hereby admit due service of notice of the foregoing petition. December 9th, 1861.

ANDREW GLASSELL,
Of Counsel for certain Settlers, &c.

593 Leave is granted to move for a rehearing on the within cause. Jan'y 6, 1862.

OGDEN HOFFMAN, *Dist. Judge.*

Service is this day admitted.
Jan'y 6, 1862. WM. H. SHARP, *U. S. Att'y.*

Endorsed: Filed January 6th, 1862

W. H. CHEVERS, *Clerk.*

Opinion on rehearing, approving the survey of John C. Hays.

UNITED STATES
vs.
EX'RS OF J. L. FOLSOM, dec'd. } No. 359.—June 25, 1862.—"Rio de los Americanos."

The official survey in this case having been brought into court under the provisions of the act of 1860, the cause was argued and a decision rendered setting aside the survey and ordering a new one to be
594 made, as directed in the opinion.

An application for a rehearing was thereupon made on behalf of the claimants and intervenors, and the cause has been reargued and submitted.

The survey for which the claimants contend is that made by Jno. C. Hays, esq., former surveyor general in 1857.

There can be no doubt that if this survey be disturbed, the case would be one of singular hardship. It appears that when the cause was pending before this court on appeal from the board of land commissioners, it was strenuously objected on the part of the U. S., and

of some parties who have since intervened in this proceeding, that the decree of the board was erroneous, inasmuch as it required the survey to be made substantially as in the Hays survey, and was to include Negro bar and the town of Folsom.

On this and other questions elaborate arguments were heard, and on the 23rd February, 1857, an opinion was delivered in
595 this court declaring the claim to be valid, and directing a decree of confirmation to be entered for the land as described in the grant and delineated on the diseño. Whether the particular description of the land contained in the decree of the board was or was not in conformity with the calls of the grant and diseño, does not appear to have been discussed or intended to be decided in the opinion referred to.

No decree was entered pursuant to this opinion; but on the 29th April, 1857, a stipulation was made by the district attorney, pursuant to the instructions of the Attorney General, by which it was agreed that the appeal should be dismissed, and that the claimants should have leave to proceed "under the decree of the board of land commissioners as under final decree."

A consent order to this effect was accordingly entered, and a survey pursuant to that decree was made by John C. Hays, esq., the then surveyor general.

596 The correctness of this survey appears to have been acquiesced in by the U. S. from May, 1857, until September, 1858, when an opinion adverse to it was delivered by the Secretary of the Interior, in whom the right of final decision in such matters was then supposed to reside.

In the mean time lands outside of the survey, and which it is now sought to include within the grant, had been advertised and sold as public lands.

The intervenors, also, who had resisted the affirmance of the decree of the board, acquiesced in its finality; and large purchases were made, at a very heavy outlay, of portions of the tract included within the Hays survey, but which, up to the time of the final confirmation of the decree of the board, it had been contended should not be included.

On the faith of the finality of this decree, the probate court having jurisdiction of the estate of the late Jas. L. Folsom, ordered a sale of the land within the boundaries as described in the decree; and
597 the supreme court of this State has in several suits sustained ejectments brought by persons claiming under the grant for lands embraced within the boundaries as therein set forth. On the various sales effected by the executors of Folsom, his estate has receive large sums of money; but if the location be now altered so as to exclude the lands sold by them, the purchasers will be without title, while the estate will acquire a large body of land the title to which has always been disclaimed, and which has, to a considerable extent, been settled upon as public land.

It is proper to observe that the executors have no wish to disturb the location as fixed by the Hays survey, the correctness of which they have so emphatically affirmed by their acts.

In the opinion recently delivered by this court, it was not assumed that the jurisdiction conferred by the act of 1860 enabled the court to set aside or correct a location definitely made by the final decree
598 either of the board, of this court, or of the Supreme Court, in cases where such decrees declared and established boundaries. But it was held to be clearly within its power to construe and interpret such decrees, and that the petition, the diseño, the grant, and other documentary evidence of title on which the decree was founded, and to which it refers for greater certainty, were properly to be considered in ascertaining the true intent and meaning of the decree. If, therefore, the decree described a particular tract, but the petition, diseño, and grant referred to in the decree indicated a different tract, a repugnancy on the face of the decree would arise, which would give to the court the right to carry into effect the presumed intention of the decree by conforming to the title and correcting the error in the description.

On referring to the petition, diseño, and grant, it appeared to the court that the intention of the governor to grant a tract four leagues long by two wide on the American river, was manifest, and
599 that the board directed the eastern line to be run due north and south on the supposition that, as indicated on the diseño, the course of the river was from east to west, and that a line drawn N. and S. would be perpendicular to its general course.

If it is urged, however, that the board were, in fact, aware that the general course of the river was from NE. to SW., and not from E. to W., notwithstanding that the latter was stated by Mr. Bidwell to be its generally course—if this be so, so much of the reasoning in the opinion of this court as proceeds upon the hypothesis that the board intended to make the east and west lines perpendicular to the general course of the river, and described as running N. and S., because they supposed the river to run from E. to W., must fail.

But the question recurs whether in thus locating the grant the board have designated a tract different from that described in the title-papers. It must be presumed that they intended to confirm to the claimants the tract granted, and none other. If, therefore,
600 on referring to the title-papers, we find the land granted to be different from that described in the decree, the title-papers must control, especially as they are in terms referred to and made a part of the decree itself; and this repugnancy or inconsistency in the decree would authorise this court, in the exercise of the duty of construing it, to follow that part of it which refers to the title-papers, rather than that part which defines the boundaries.

But it is evident that the court, if confined to the mere right of construing the decree, could disregard the specific boundaries mentioned in it, only where a plain and unmistakeably repugnance existed between the description in the title-papers and that embodied in the decree. That the board and the courts had, under the act of 1851, jurisdiction to determine "all questions as to extent, quantity, location, and boundary," has been expressly decided by the Supreme Court.—(21 How., 449.) When, therefore, such questions have arisen and

been determined, and the decree has become final and conclu-
601 sive on all parties, this court, cannot under power of construing the decree, reverse it on the ground that in its judgment the land might have been more correctly located. The repugnance between the decree and the title-papers must be plain and irreconcileable before this court, if empowered only to construe, could be justified in disregarding the specific description by which the board have located the land. Even if, as is contended, the act of 1860, gave to this court jurisdiction to determine all questions as to location and boundary, and to disregard all determinations of those questions made in former decrees, either of the board, of this court, or of the Supreme Court, it is clear that when those decrees are specific and plain, when they have long been accepted as finally and definitely locating the land, and where large interests have been acquired on the faith of their finality, the location ought not to be disturbed except in cases of manifest error and on clear proofs of the incorrectness of the location, and not on the mere ground that if the question were
602 new, this court might have located the land differently.

I proceed to inquire, therefore, whether in the location made by the board there is such manifest error, and clear repugnance to the description of the land as contained in the title-papers, and to make it the duty of this court to direct a different location to be made. It has already been stated that it appeared to this court to have been manifestly the intention to grant a tract along the American river two leagues wide by four leagues long. It is objected that there is nothing in the petition, diseño, or grant to warrant this conclusion.

The petition describes the land as bounded by the lands of Señor Sutter, as explained in the map. "The place is situated on the bank of the American river, and consists of four leagues in length to the east, and two leagues in breadth to the south." Both the decree of concession and the grant describe the land as situated on the banks of the river "called that of the Americanos;" but the only
603 boundaries mentioned in the grant are the lands of Sutter and the low hills to the east.

The diseño according to the scale represents a tract four leagues in extent from west to east, and two leagues from N. to S. As the diseño and the grant show that the land lay on the bank of the American river, and as the petition showed that it was to be four leagues in length to the east and two leagues in breadth to the south, it appeared to the court fair to conclude that the tract was to be four leagues along the river by two in width, especially as on the diseño the river was represented as running from east to west. When, however, it was found that the course of the river from NE. to SW., it seemed to me reasonable to give to the tract an extension of four leagues in a direction parallel with the general course of the stream, and not in a due easterly direction. It is true that the description in the petition makes the tract extend "four leagues to the east," (por el este,) but, as before observed, that direction appears to have been mentioned from its supposed conformity with the course of the river, and not
604 because it was intended to fix the extent of the tract by running a line in a course precisely east.

The loose and confused ideas of the former possessors of this country with regard to the points of the compass are well known, and the diseño before us shows how erroneous was the notion of the petitioner as to the course of the American river. When, therefore, he asked for a tract "upon the banks of the river consisting of four leagues in length towards the east, and two in breadth towards the south," and delineated it on a diseño whereon he represented the river as flowing from east to west, the influence seems almost irresistible that he intended to ask for a tract of those dimensions along the river and running "*towards* the east," but in a direction parallel to its course.

Such seems to have been the opinion of the board in framing the very decree, the correctness of which is so earnestly defended. By that decree the eastern boundary is not required to be drawn through
605 a point four leagues distant in *a due east direction* from the westerly point of commencement. On the contrary, the southerly or back boundary is required to be ascertained by drawing "lines *easterly in a direction parallel to the general direction of the American river*, and at the distance, as near as may be, of two leagues therefrom, four leagues, *or so far as may be necessary to enclose eight leagues*," &c.

It will be perceived that neither the direction nor the length of this boundary is determined on the principle now contended for by the claimants; for it is required to be composed of lines drawn parallel to the course of the river which the board seem to have thought would run "easterly," and its length was not to be four leagues at all events, but such as would include eight leagues within the tract.

As the American river formed the northern boundary, and lines parallel to it at the distance of two leagues formed the southern boundary, which was to be four leagues in length or so far as might be necessary to enclose eight leagues, I cannot perceive how it can
606 be doubted that the board, like this court, considered the tract as extending four leagues in length along the river by two in breadth.

But the real question in the case is whether the eastern and western boundary lines should be run in a due north and south direction, or perpendicularly to the general course of the river. In the opinion heretofore delivered the latter mode was held to be the more correct, and on the following considerations:

1. As the tract was to be situated on the bank of the river, and to extend four leagues in a direction parallel to its general course, it seemed that the side lines, if drawn perpendicular to the course of the river, would best preserve the rectangular shape which the diseño appeared to indicate, and would satisfy the terms of the petition, which described it as four leagues in length by two in width.

2. By running the eastern line in a due north and south direction, a long tongue of land would be included which it was supposed
607 was not represented on the shaded portion of the diseño, and which gave to the land a river front of about six leagues, without computing the abrupt lands in the stream.

In reply, it is suggested that the location of the western line has never been disputed; that it commences at a marked oak tree on the Sacramento, and runs due south two leagues; that the court has felt

compelled to adopt this line, and to that respect to depart from its own theory of location; and that if the western line be run north and south, the eastern line should be parallel to it.

3. That on the original diseño produced from the archives, the tongue of land referred to is represented and the course of the river delineated from a point beyond the eastern limit of the Hays survey.

4. That the only boundaries called for in the grant are the lands of Sutter and the lomerias towards the east, and the Hays survey is within those limits.

5. That the grantee always claimed lands as high up the river as the Hays survey extends, and that his first settlement was
608 made at or near Negro bar, which, under the opinion of the court would be excluded.

6. That by the Mexican ordinances the measurements were required to be made from north to south and from east to west; and where the grant is made on the seashore or on the banks of a river or large lake, such shore was to form the boundary on one side from whence the measurements shall commence.—(Ordenanzas de Tierra y Agua, art.5, 6, 8.)

7. That the land included in the Hays survey is wholly within the boundaries mentioned in the grant, viz: the banks of the river, the lands of Sutter, and the lomerias; and that the claimant has the right of electing the location within those limits.

8. That the grantee in his lifetime, and his representatives since his death, have in the most emphatic manner made their election.
That the location directed by the court would give to the
609 claimants 6,000 acres of land which they have never claimed and do not now claim, and would take an equal amount from parties who have purchased, since the decree of the board became final, lands for which they have paid a very large sum, which are worth several hundred thousand dollars and on which not less than $30,000 have been paid for taxes within the last five years.

9. That even if, under the act of 1860, this court has full authority to review and correct any final decree of the Supreme Court, of this court, or of the board, so far as the same relates to boundary and location, yet it ought not to disturb such decrees where important interests have been acquired on the faith of their finality, except in cases of clear error or oversight, arisen from the want of sufficient information as to the natural features of the country, &c., and not merely on a difference of opinion in a doubtful case, as to the most correct mode of locating the land.

10. That the final decrees of either of the tribunals mentioned, when they determine questions of location, boundary, and
610 extent, are made in the exercise of jurisdiction decided by the Supreme Court to have been conferred on them by the act of 1851. They are therefore conclusive on the United States and the claimants, especially when, as in this case, they have been accepted and made final by consent, and that though this court, in interpreting them, may be required to be governed rather by the title-papers than by the description of the land embodied in the decrees, yet it is not authorised to disregard such descriptions when plain and positive,

unless where they are clearly repugnant to and irreconcileable with the terms of the grant, and other documentary evidence of title, which is not this case.

I am much impressed with the force of these suggestions. I still think that if the question were a new one, the more correct location would be to measure a tract four leagues in length in a direction parallel to the general course of the river, and bounded on the east and west by lines perpendicular to it; or if the western boundary
611 along the land of Sutter be considered as established by the long recognition of it, then the tract might be measured four leagues in length, in a direction parallel to the course of the river, and the easterly line run to the river for quantity. Notwithstanding all that has been urged to the contrary, it is plain that when the board directed the southern boundary to be run "easterly by lines parallel with the general direction of the river, and thence northerly to the river," they supposed the course of the river to be nearly "easterly," and that the last line would be at or near at right angles to it; nor could they have anticipated that a due north line would include within the tract the long tongue of land referred to, and increase so largely the frontage on the river.

But it cannot be said that the survey, as made under the decree, is repugnant to or inconsistent with the terms of the grant. It is within the exterior boundaries mentioned in the title-papers, viz., the "banks of the river," the "lands of Sutter," and the "lomerias;" and though its shape, and especially the extent of front along
612 the river, render it liable to grave objections, yet, under all the circumstances, I have come to the conclusion that I ought not to disturb it.

The survey as made by Mr. Hays is admitted to be substantially in conformity with the decree of the board.

By modifying it in some comparatively unimportant particulars, it would be in precise accordance with the decree.

That decree has been admitted by the United States to be correct. It has been accepted as finally determining the location and boundaries of the land. Large sums have been paid and immense interests acquired on the faith of its finality, and in some instances by parties who only bought after exhausting all legal means to procure a correction of its alleged errors. It has been treated by the supreme court of this State, in several suits, as finally determining the boundaries and location of the tract. The representatives of the grantee have received large sums for lands which the proposed change
613 in location would exclude; while the government of the United States have advertised and sold as public land, lands which the same change would include in the grant.

After much consideration, it has appeared to me that, under all the circumstances, it is my duty to approve the survey substantially as made by Hays under the decree, notwithstanding my conviction that if the question were new, that survey is not such as this court would have directed to be made.

Endorsed: Filed June 25, 1862.

W. H. CHEVERS, *Clerk.*

614 *Order vacating order of* 18 *Nov.*, 1861, *and directing new survey.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the second day of July, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs. } No. 359.
THE EX'RS OF J. L. FOLSOM, dec'd.

This cause coming on to be heard on the rehearing heretofore ordered therein, was argued by the counsel on both sides, whereupon it appearing to the satisfaction of the court that the order entered in said cause on the 18th day of Nov., 1861, rejecting the survey as approved by Surveyor General Mandeville on the 28th day of
615 November, 1859, and filed in this cause Jan'y 14, 1860, and ordering a new survey, was erroneous. It is therefore ordered, adjudged, and decreed that the said order be, and the same is hereby, rescinded and set aside.

And it is further ordered, adjudged, and decreed that the said survey of the said Surveyor Gen'l Mandeville, approved as aforesaid, be, and the same is hereby, rejected, and that the present surveyor general of the State of California be, and he is hereby, directed to correct and reform the same in accordance with the conclusions of the court contained in its opinion filed in this case on the 25th day of June, 1862, for which purpose he is hereby instructed to adopt the survey and plat of the land claimed in said cause, as made under the instructions of John C. Hays, late surveyor general of California, and approved by him on the 29th day of May, 1857.

OGDEN HOFMAN,
U. S. Dist. Judge.

Endorsed:

U. S. MARSHAL'S OFFICE,
Northern Dist. of Cal'a.

I have served the within order upon the U. S. surveyor
616 gen'l for California, by delivering a certified copy thereof to Edw. Conway, esq., chief clerk in his office, on this the 17th day of July, 1862.

WM. RABE, *U. S. Marshal*,
By DAVID R. McKEE, *Deputy.*

SAN FRANCISCO, *July* 17*th*, 1862.

Filed July 2nd, 1862.

W. H. CHEVERS, *Clerk.*

617 *Decree approving survey.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Saturday, the second day of August, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The Hon. Ogden Hoffman, district judge.

THE UNITED STATES *vs.* HENRY W. HALLECK, ARCHIBALD C. PEACHY, and P. WARREN VAN WINKLE, executors of the last will and testament of Joseph L. Folsom, dec'd.	No. 359.

And now at this day, it appearing to the court that the United States surveyor general for the State of California has returned to this court his final survey of the land confirmed to the claimants in this case, in conformity to the order and decree of this court filed-therein on the second (2nd) day of July, A. D. 1862, the filed notes whereof were approved by John C. Hays, late United States surveyor general of the State of California, on the 29th day of May, A. D. 1857,
618 and adopted as the final survey of the lands of the rancho "Rio de los Americanos," herein claimed, in pursuance of said order and decree; and a copy of the original plat of said survey duly certified by Edward F. Beale, United States surveyor general for said State of California, on the 24th day of July, A. D. 1862, having been returned and filed in this court on the 28th day of July, A. D. 1862, it is ordered, adjudged, and decreed that the same be, and is hereby, approved and confirmed as the final survey of the lands confirmed to the said claimants by the decree of the late United States land commission, filed on the 12th day of June, A. D. 1855, and the decree of this court affirming the same, filed on the 30th day of April, A. D. 1857, which said lands are bounded as follows, to wit:

Commencing at a point on the south bank of the American river, where an oak tree formerly stood, known and marked as the east boundary on said river of the lands claimed by John A. Sutter, which tree was destroyed by the great flood of January, 1862, the said point being marked on said certified copy of the plat of the said of-
619 ficial survey, "oak tree;" beginning and running thence up and along the said American river, and bounding thereon by the courses and distances marked on said certified copy, and numbered from one (1) to forty-nine, (49,) inclusive, to the point marked on said plat "Post Leidesdorff, tree L; thence, by course No. fifty, (50,) south four hundred and twenty (420) chains seventy-five (75) links, to a post; thence, by course No. fifty-one, (51,) south twenty-nine and one-quarter ($29\frac{1}{4}^{\circ}$) degrees west, four-hundred and sixty-six (466) chains fourteen (14) links, to a point marked on said plat 'charred post" "Leidesdorff;" thence, by course No. fifty-two, (52,) west two hundred and fifty-two (252) chains eighty (80) links, to a

point marked on said plat "Post Leidesdorff;" thence, by course No. fifty-three, (53,) south forty-six (46°) degrees west, four hundred and fifty-two (452) chains eighty-seven (87) links, to a point due south of the point of commencement, marked on plat "Post" "Leidesdorff;" thence, by course No. fifty-four, north four hundred and twenty-one (421) chains thirty-six (36) links, to the place of beginning—containing thirty-five thousand five hundred and twenty-one $\frac{36}{100}$ (35,521 $\frac{36}{100}$) acres.

620 And it is further ordered that the said certified copy of the plat of said official survey, approved and certified as aforesaid, and herein filed on the 28th day of July, A. D. 1862, be annexed to and made a part of this decree.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed August 2nd, 1862.

W. H. CHEVERS, *Clerk.*

(Here follows map, marked original, page 620.)

Boundary lines.

No.	Course.	Length.		No.	Course.	Length.	
		Chs.	*lks.*			*Chs.*	*lks.*
1	S. 79¼ E.	16	50	28	S. 78½ E.	35	00
2	89	10	00	29	66¼	26	50
3	N. 57½	13	00	30	54¾	18	50
4	34	15	00	31	77½	28	50
5	North.	11	40	32	N. 79½	70	00
6	N. 3 W.	9	00	33	65¾	44	00
7	15¼ E.	30	00	34	85½	9	00
8	27 W.	17	00	35	76¼	29	50
9	68	22	00	36	51	20	00
10	12 E.	20	00	37	63½	20	00
11	35½	18	50	38	21	42	00
12	57¼	26	50	39	12¾	40	00
13	S. 85	34	00	40	0½	85	00
14	N. 44½	62	00	41	3	26	00
15	25½	28	00	42	55¼	64	50
16	26 W.	31	00	43	62¾	42	00
17	23¼ E.	21	00	44	2¾	77	00
18	50¾	15	00	45	18½	25	00
19	36¼	14	00	46	85	22	00
20	84	9	00	47	43½	26	00
21	41¾	15	50	48	52	12	00
22	31	51	00	49	72	10	00
23	64½	17	50	50	South.	420	75
24	N. 40¼	87	00	51	S. 29¼ W.	466	14
25	60¾	13	00	52	West.	252	80
26	73¼	31	00	53	S. 46 W.	452	87
27	73¼	12	00	54	North.	421	36

The field-notes of the rancho "Rio de los Americanos," and from which this map has been made, examined, and approved, are on file in this office.

JOHN C. HAYS,
Surveyor General, California.

SURVEYOR GENERAL'S OFFICE,
San Francisco, California, May 29th, 1857.

This plat of survey of the rancho "Rio de los Americanos" is adopted in conformity with the decree of the United States district court, northern district of California, dated July 2d, 1862.

E. F. BEALE,
U. S. Surv'r Gen'l, Cal.

SURVEYOR GENERAL'S OFFICE,
San Francisco, California, July 21st, 1862.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California.

I hereby certify this to be a full, true, and correct copy of the original map on file in this office of the official survey of the rancho Rio de los Americanos, finally confirmed to Joseph L. Folsom.

In witness whereof, I have hereunto signed my name and caused the seal of this office to be affixed this the 24th day of July, 1862.

E. F. BEALE,
U. S. Surv. Gen'l, Cal.

Explanatory remarks from the field-notes of the deputy surveyor, at end of No. 26.

"This station is three chains and sixty-eight links north of the post set in running the range line in consequence of the then existing brush and other impediments near the range line"

Station at the end of No. 40. "The bank has cut in by the wash of the river and mining operations about four and a half chains since the township line was established."

Approved August 2d, 1862.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Order granting appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Monday, the sixth day of October, in the year of our Lord one thousand eight hundred and sixty-two.

Present: the honorable Ogden Hoffman, district judge.

THE UNITED STATES *v.* HENRY W. HALLECK, ARCHIBALD C. PEACHY, AND P. WARREN VAN WINKLE, executors of the last will and testament of J. L. Folsom, dec'd.	No. 359.

621 This cause having come on to be heard on objections filed to the survey and location by the surveyor general of the

U. S. for Cala., of the land heretofore confirmed to the claimants; and the said survey and location having been disapproved by the court, and a new survey ordered, and said new survey having been made, re-returned, and approved by the court by its final decree, entered August 2, 1862: Now, on application of Wm. H. Sharp, esq., attorney of the U. S. for the northern district of California, it is ordered that an appeal in behalf of the United States from said final decree be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, and proceedings in said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed October 6th, 1862.

W. H. CHEVERS, *Clerk.*

Stipulation and order allowing certain exhibits to go in the transcript on appeal.

U. S. district court, northern district of California.

THE UNITED STATES
vs.
EXECUTORS OF J. L. FOLSOM, dec'd. } No. 359

622 It is hereby stipulated and agreed that the original exhibits on file in the above-entitled cause, to wit: Exhibit Goddard No. 1, Exhibit Goddard No. 2, Exhibit Colby No. 1, Exhibit Bidwell No. 1, filed May 14, 1861, may be, instead of copies, attached to and made part of the transcript of the record on appeal, which appeal has been taken by the U. S., but that nothing in the stipulation shall be construed as an assent by claimants to the taking or prosecuting of said appeal.

Oct. 8th, 1862.

A. P. CATLIN,
Att'y and of Counsel for Claimants and Intervenors.
WM. H. SHARP, *U. S. Att'y.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Friday, the tenth day of October, in the year of our Lord one thousand eight hundred and sixty-two.

Present: the honorable Ogden Hoffman, district judge.

623 THE UNITED STATES
vs.
EX'RS J. L. FOLSOM, dec'd. } No. 359.

On reading and filing the annexed stipulation, and on application of W. H. Sharp, esq., U. S. att'y, it is ordered that the clerk of this court deliver to the U. S. att'y the original exhibits mentioned in said stipulation for the purpose therein stated.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed Oct. 10th, 1862.

WM. H. CHEVERS, *Clerk.*

Boundary lines.

No.	Course.	Length.	No.	Course.	Length.
		Chs. lks.			*Chs. lks.*
1	S. 79¼ E.	16 50	28	S. 78½ E.	35 00
2	89	10 00	29	66⅓	26 50
3	N. 57½	13 00	30	54¾	18 50
4	34	15 00	31	77½	28 50
5	North.	11 40	32	N. 79½	70 00
6	N. 3 W.	9 00	33	65¾	44 00
7	15¼ E.	30 00	34	85½	9 00
8	27 W.	17 00	35	76¼	29 50
9	68	22 00	36	51	20 00
10	12 E.	20 00	37	63½	20 00
11	35½	18 50	38	21	42 00
12	57¼	26 50	39	12¾	40 00
13	S. 85	34 00	40	0½	85 00
14	N. 44½	62 00	41	3	26 00
15	25½	28 00	42	55¼	64 50
16	26 W.	31 00	43	62¾	42 00
17	23½ E.	21 00	44	2¾	77 00
18	50¾	15 00	45	18½	25 00
19	36¼	14 00	46	85	22 00
20	84	9 00	47	43½	26 00
21	41¾	15 50	48	52	12 00
22	S. 31	51 00	49	72	10 00
23	64½	17 50	50	South.	420 75
24	N. 40¼	87 00	51	S. 29¼ W.	466 14
25	60¾	13 00	52	West.	252 80
26	73½	31 00	53	S. 46 W.	452 87
27	73¼	12 00	54	North.	421 36

NOTE.—The delineation of the topography of the country embraced within the eastern boundary, (as surveyed by Jones,) and a line south from the mouth of Alder creek and also north of and adjoining the American river, was made by me on the 23d day of September, 1859, from actual survey and personal examination by myself subsequent to the issue of this map from the office of J. W. Mandeville, U. S. surveyor general.—(Prairie City, as located by Jones, was incorrect.)

San Francisco, Sept. 1, 1859.

Witness my hand this 23d day of September, 1859.

EDWIN A. SHERMAN, *Surveyor.*

The topography of the country, as represented upon this map, is generally correct, but more broken than delineated by Sherman.

The *highths* denoted by figures in blue ink were taken by me on the 7th, 8th, 9th and 10th of April, 1861. The initial points were, 1st, the railroad track a Alder creek station, (marked upon the map A. C.;) 2d, railroad track at Anderson's, (marked A. on the map;) 3d, Willow creek ravine, near R R. crossing, (marked W. C. R. on map;) 4th, Prairie City, (marked P. C.)

G. W. COLBY, *Surveyor.*

Explanatory remarks from the field-notes of the deputy surveyor.

Station at end of No. 26. "This station is three chains and sixty-eight links north of the post set in running the range line, in consequence of the then existing brush and other impediments near the range line."

Station at end of No. 40. "The bank has cut in by the wash of the river and mining operations about four and a half chains since the township line was established."

The field-notes of the rancho "Rio de los Americanos," and from which this map has been made out, have been examined and approved, and are on file in this office.

(Signed) JOHN C. HAYS,
Surveyor General, California.

SURVEYOR GENERAL'S OFFICE,
San Francisco, California, May 29th, 1 7.

U. S. SURVEYOR GENERAL'S OFFICE.

I certify this to be a true, full, and correct copy of the original on file in this office.

[SEAL.] Given under my hand and seal of office, at the city of San Francisco, this first day of September, 1859.

J. W. MANDEVILLE,
U. S. Surv'r Gen'l, Cal'a.

Nostros los infraœscritos por estas præsentes certificamos que el presente plano es una copia del plano que servia de use y referencia al Señor Dr. Manuel Micheltorena, gobernador del departam'to de las Californias, durante su administracion de gobierno de dicho departamento.

PABLO DE LA GUERRA. [Rubric.]

JOSÉ ABREGO.

Certifico que este mapa es igual a otro que se presente al gobierno en tiempo del General Micheltorena cuando yo estaba encargado de su secretaria.

Monterey, Marzo 26 de 1851.

MAN'L JIMENO. [Rubric.]

624 I, William H. Sharp, district attorney of the United States for the northern district of California, by virtue of the power vested in me by law, to wit, under the act of the Congress of the United States entitled "An act relative to appeals to the Supreme Court of the United States," approved August 6, 1861, do hereby certify that the annexed and foregoing (623) six hundred and twenty-three written pages, together with the exhibits also annexed, exhibit a full, true, and correct transcript of the record and proceedings in the case of the United States *vs.* The Executors of J. L. Folsom, deceased, and numbered 359 on the docket of land cases in the district court of the United States for the northern district of California; and that the original papers and maps, from which the said transcript has been made, were

duly delivered to me by the clerk of said district court, at my request, for the purpose of having them transcribed, and that the same are of record in said clerk's office.

In testimony whereof, I have hereto set my hand and private seal, at San Francisco, district aforesaid, this sixteenth day of October, A. D. 1862, and of our independence the 87th.

WM. H. SHARP, *U. S. Att'y.*

Filed 15th November, 1862.

In the Supreme Court of the United States.

DECEMBER TERM, 1863.

THE UNITED STATES, APPELLANTS,

vs.

EXECUTORS OF J. L. FOLSOM, DECEASED.

GOVERNMENT PRINTING OFFICE.

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In the Supreme Court of the United States.

DECEMBER TERM, 1863.

THE UNITED STATES, appellants,
vs.
EXECUTORS OF J. L. FOLSOM, deceased.

This case comes up on appeal from a decision of Judge Hoffman, in the district court for the northern district of California, fixing the extent, boundaries, and location of a tract of land in California, termed the Rancho de los Americanos.

For a proper understanding of some of the questions which arise in the case, a brief recital of the documents upon which claimants base their claim will be necessary. It will be all the more necessary from certain peculiarities and discrepancies not usually found in California land grants.

In the petition filed before the land commission for California, the petitioner, the late J. L. Folsom, and one Anna Maria Sparks, represent, among other matters, that on the 29th of August, 1844, Wm. A. Leidesdorff asked of Manuel Micheltorena, then governor of California, a grant for a tract of land on the American river, and on the 8th of October, 1844, received from Governor Micheltorena a grant of the land petitioned for, containing eight square leagues, with the boundaries described in the grant and corresponding map. That copies and translations of the original espediente, and of the title which issued to Leidesdorff, were submitted. And the petitioners further represented that said grant was afterwards duly confirmed, and that the *possession* of the land so granted was *duly given to said Leidesdorff*.

They further, by said petition and a supplement, set out the mode in which they alleged that the said Anna Maria Sparks succeeded to the rights of Leidesdorff, and how they were finally vested in Mr. Folsom.

Upon examination of the original espediente which exists in the archives of California, and of the copy title filed by Captain Folsom,

from his own custody, the following facts appear: The espediente shows that, in August, 1844, Leidesdorff applied to Governor Micheltorena for a grant of land near Señor Sutter's, as shown by an accompanying diseño, and described as being on the bank of the American river, and consisting of four leagues in length towards the east, and two in breadth towards the south. This, with a report from John A. Sutter, was referred to Jimeno, secretary of state, and was favorably reported on by him at Monterey, October 1, 1844. On the 8th of that month, that part of the espediente commonly known as the Vista la Peticion describes as granted to Leidesdorff, "el terreno que se halla situado a las margenes del rio nombrado de los Americanos, colindante con el terreno concedido a la colonia del Señor Sutter, y *con los lomerias del oriente*, en estencion de ocho sitios de ganado mayor," (P. R., p. 27,) translated in the record thus: "The land which is situated on the banks of the river named the American, bounded by the land granted to the colony of Señor Sutter, and by the hills on the east, in extent eight square leagues."

Next, the espediente contains two sets of the final grant or titulo, sometimes called the "Por cuanto," from the words with which it commences. We contend that these are final, authentic, and authoritative declarations of the grantor's will. One of these is signed, and seems to have been the draught from which the other was copied. They are identical in the wording. In their recital they declare the quantity of land as being *six leagues*, "colindante con el terreno concedido a la colonia del Señor Sutter, y con las lomerias del oriente," (P. R., pp. 27, 28)—that is, bounded by the land granted to the colony of Señor Sutter, and the "lomerias" on the east. But these documents, found in the authoritative archives of the government, and there still extant, are not translated in the record; nor were they at any time translated in any document submitted to the land commission or district court.

The petitioners next filed a copy of the titulo or grant as produced from their private custody. In this the land is described as being *eight* leagues in extent, and a translation is appended thereto. As the differences between the originals and copies cannot be so well described in a brief, reference is made to a photographic copy of the papers made by order of the United States government. A copy of them is found in the record, proved by Mr. Hopkins, clerk of the archives, marked "Exhibit, Hopkins, No. 1," consisting of fourteen photographic pages. (P. R., p. 166.) To these were added the dif-

ferent instruments of conveyance and other proceedings, by which it was claimed that Folsom had acquired all the interest in the lands which were once Leidesdorff's.

Before the board of land commission evidence was given to sustain the validity of the original grant to Leidesdorff, and of the various transfers of interest to Folsom; but the serious dispute seems to have been concerning the succession of Anna Maria Sparks, who claimed to be the mother of and heir-at-law of Wm. A. Leidesdorff. The questions raised were thus stated in the opinion delivered by the land commission in passing upon the case:

"This is a claim for eight square leagues of land, called Rio de los Americanos, in the county of Sacramento."

"The petitioner claims title to the premises by virtue of a legal conveyance from Anna Maria Sparks, the mother of, and heir-at-law of Wm. Alexander Leidesdorff, deceased, to whom it is alleged that the lands described in the petition were granted by Governor Manuel Micheltorena, by title bearing date October 8, 1844. The original title is filed in the case, and its genuineness and authenticity established by the testimony. The lands are described with sufficient certainty to enable the surveyor, by reference to the original petition and map contained in the espediente, to identify and locate the particular land granted, and the proof shows a full compliance with the conditions of the grant. This evidence is clearly sufficient to establish the validity of the title as it existed in Leidesdorff at the time of his death. But a confirmation to the present claimant is resisted on the part of the United States, upon the ground that the heir of Leidesdorff being a foreigner, could not, under the law of Mexico in force at the time of his death, take by inheritance, and that the lands consequently escheated to the government, the original grantor."—(P. R., p. 91.)

Having thus briefly disposed of the question of the grant, and having stated the principal objection in the case, the commission proceed to examine it in an elaborate opinion of some length to be found in printed Record, pp. 92 to 101.

On the 12th August, 1855, the decree of the board was filed as follows:

"J. L. FOLSOM
vs.
"THE UNITED STATES.

"In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioners is valid, and it is therefore decreed that the same be confirmed. The land of which confirmation is made is situated in the county of Sacramento, and is known by the name of 'Rio de los Americanos,' being the same which was granted to William A. Leidesdorff by Governor Micheltorena, on the 8th day of January, 1844, and is bounded as follows, to wit: Beginning at an oak tree on the bank of the American river, marked as boundary to the lands granted to John A. Sutter, and running thence south with the line of said Sutter two leagues; thence easterly by lines parallel with the general direction of the said American river, and at the distance as near as may be of two leagues therefrom, four leagues, or so far as may be necessary to include in the tract the quantity of eight square leagues; thence northerly by a line parallel to the one described above, to the American river; thence along the southern bank of said river, and binding thereon, to the point of beginning. *For a more particular description, reference to be had to the original grant, and to the petition and map contained in the espedicnte.*

"R. AUG. THOMPSON,
"S. B. FARWELL,
"*Commissioners.*"

From these proceedings before the commission, the case was transferred by the United States to the district court of the United States for the northern district of California, where the case was re-argued, and the same question of the succession of Leidesdorff was again raised and decided in the same way, on February 23, 1857. Judge Hoffman delivered his opinion, which commences thus:

"The claim in this case was confirmed by the board. The authenticity of the grant to William A. Leidesdorff was not disputed, but a question was made whether the land had not escheated to the Mexican government on the death of Leidesdorff without heirs who were Mexican citizens."

After a brief discussion of this point, he ends by saying:

"We think that no reasonable doubt can be entertained that the

land claimed in this case descended to the heirs of Leidesdorff, from whom the claimants derive title.

"*A decree of confirmation for the land as described in the grant, and delineated on the map, must therefore be entered.*"—(P. R., p. 105.)

Soon after this decree, it appears that, the Attorney General having decided not to appeal from the decision, the following decree was entered :

"The Attorney General of the United States having given notice that no further appeal will be prosecuted in the case on the part of the United States, and a stipulation to this effect having been entered into by the United States attorney, on motion of the district attorney, it is ordered, adjudged and decreed, that the claimants have leave to proceed under the decree of the land commission heretofore rendered in their favor, as under final decree.

"Filed April 30th, 1857.

"OGDEN HOFFMAN,

"*United States District Judge.*"

In consequence of certain matters which were sought to be introduced into the case by claimants, it has been necessary to call the attention of the court to the proceedings above recited. To resume the narrative of the cause, claimants proceeded to have the tract surveyed by the surveyor general of California, and on the 29th May, 1857, twenty-nine days after the last decree was entered, a survey was completed, returned and approved by the surveyor general. This survey is known as the "Hays survey," and a copy of it is in the record, marked ——.

It was then transmitted in due course to the Department of the Interior for examination and the issuance of a patent, should it meet the approval of the department. But it did not. Upon examination the survey was disapproved, and a report of the Commissioner of the General Land Office, dated May 8, 1858, was made to the Secretary of the Interior, who, on September 2, 1858, made a decision condemning the survey as erroneous, because it did not conform to the description of the land granted by the Mexican government, its delineation on the diseño, and its confirmation by the decree of our own court; and he remanded it to the surveyor general for a re-survey upon the principles which he laid down.—(See appendix to this brief.) It may be here remarked, that at this time it was supposed and contended by many persons that the surveyor general of California had final jurisdiction in these questions of loca-

tion and survey, and that the duties of the Interior Department were limited to the administrative act of issuing a patent upon such survey as might be sent to it by the surveyor general. But upon argument, the Interior Department held that it was both its right and duty to entertain questions which might arise in these cases, and that under the law it had a supervisory power over matters coming up to it from the surveyor's office.

Upon this point there has been no doubt since the case of Castro *vs.* Hendricks, 23 Howard, p. 438, sustaining the view of the department.

After the decision of the Secretary of the Interior adverse to the survey of claimants had been made, and whilst the surveyor general of California (then J. W. Mandeville) was acting, or about to act, under the decision of the Interior Department, the claimants on May 31, 1859, obtained an order from the district judge of northern California upon Mr. Mandeville, to return into court the plat and certificate of the "Hays survey," that the court might proceed to ascertain the lines, &c. of the land confirmed.—(P. R., p. 106.)

On June 6, 1859, the surveyor complied with this order, and filed in court a copy of the survey of his predecessor, at the same time informing the court of the action taken thereon by the General Land Office. On the 20th July, the United States filed objections to the said survey as erroneous, and requested that another survey should be made.—(P. R., p. 108–9.)

Under the order of court, testimony was taken, (P. R., pp. 109 to 122,) and a motion was made by claimants to confirm the "Hays survey." Upon the hearing of the matter, Judge Hoffman, on the 4th October, 1859, delivered an opinion (P. R., pp. 122 to 133) refusing that motion. He then further granted the motion of the United States, that his order made May 31, 1859, for the return of the "Hays survey," should be vacated, and all proceedings under it should be dismissed.

On the 22d November, 1859, upon further motion of claimants, the surveyor general was ordered to return into court a further survey which had been made and approved by him, and which is known as the "Mandeville survey," (P. R., p. 133,) and on January 21, 1860, claimants filed exceptions thereto. Some evidence was taken under this order, and finally, in September, 1860, sundry parties came in to represent their interests by private counsel, and the United States attorney was also represented.

After testimony taken, (P. R., p. 157 to 165,) the case duly came up for an argument, and on the 18th November, 1861, Judge Hoffman delivered an opinion deciding that neither the Hays nor Mandeville survey was correct, and ordering another survey still, upon principles laid down by him, and filed a decree in conformity with his opinion. A copy plat of this last survey was filed on the record as of November 27, 1861. On the same day the claimants obtained an order allowing ten days to submit a petition for a rehearing, (P. R., p. 177.) Soon after sundry papers were filed, (P. R., p. 178 to 193,) consisting of the following:

1st. Petition for rehearing, based upon thirteen grounds, (P. R., pp. 178, 180,) and the argument thereon, with certain translations from the "Ordenanzas de Tierras y Aguas," (p. 187.)

2d. The affidavits of R. A. Thompson, esq., one of the former members of the land commission, who decided the case below, and now attorney for the claimant; and the affidavits of two other attorneys in the case, Messrs. A. P. Catlin and H. C. Peachy, all of which affidavits set out as facts matters which were thought material to a change of the decree already made by the district court.

On the 6th January, 1862, leave was granted to *move for a rehearing*. Argument was had on this question, and on July 2, 1862, Judge Hoffman filed a final decree (P. R., pp. 200, 201) setting aside the "Mandeville survey" and the "Hoffman survey," made under his order, and setting up the "Hays survey," which had been overruled by himself, without requiring evidence of the matters set up by claimants in their petition and affidavits, and without an opportunity given the United States to cross-examine or introduce counter testimony upon the newly set up matter. Upon this state of the cause it has been brought to the Supreme Court.

The question strictly before the court, therefore, is as to the correctness of the location of the land as shown by the Hays survey; although the record also contains sufficient matter to enable the court to direct the correct manner of survey and location if the United States succeed in showing that the Hays location is incorrect.

Claimants insist that they are entitled to have confirmed to them eight leagues of land, of the dimensions and at the place delineated by the Hays survey on the part of the United States; we deny that any grant to the extent of eight leagues was ever validly made to Leidesdorff for that quantity of land, but that he received a con-

cession for *only six* leagues. Yielding that point, however, for the present, we insist that the survey and location of the land, as shown by the Hays plat, are incorrect, and must be set aside.

It is the duty of the one who comes here for confirmation of a land claim, not only to establish the validity of his title to some land, but also to point out the land and identify it with the tract conceded him by the former government of California. It is enough for us to show that the land claimed is not that which was in contemplation of the granting power. It is not for the government to show how the land should be located; that is a matter for the claimant to demonstrate.

At the hearing below great stress was laid upon the decisions confirming this title by the land commission and the district court, and in the strongest possible manner it was contended that the United States, by reason of the decrees in its own courts, were bound to confirm the claim in the precise form in which this plat represents. But we propose to show the impropriety of their survey by reason of the very decrees upon which claimants rely.

The principal ground of contention is as to the eastern extension of the lines of the ranch. In the instructions sent down from the Land Office to the surveyor general of California when this plat was disapproved, it was held "that the decree of confirmation resting upon the diseño and grant must be satisfied by the survey; first, by adhering to Sutter's line on the west, the American river on the north, and the foot-hills, near the junction, on the east of a creek distinctly laid down on the diseño; that the said creek is held to be identical with Alder creek, on the map of the rancho de los Americanos, as surveyed by Jones, the foot-hills running near the junction of said creek, and in a southeasterly direction. That these are the natural features which must control the longitudinal extension of the grant; but as quantity was petitioned for, granted and confirmed, the said quantity may be taken by increasing the depth of the survey so as to comprise the eight square leagues, thereby giving the location a more compact form."

The Mandeville survey was made in general conformity with these directions, and a glance at that and the Hays survey will show the chief difference of opinion in this matter between claimants and the government.

We propose, therefore, to examine, first, the question whether the location can be permitted to cross the hills which arise at or near the junction of Alder creek with the American river.

In a question as to the location of granted lands, it would seem most natural in due process of law, to commence our labors by examining the original title papers, and, although objection has been made to this method, we shall pursue it for the present, and afterwards examine the value of the objection.

When Leidesdorff applied for land, and the reports thereon had been made, Governor Micheltorena made his provisional concession of a tract "situado a los Margines del Rio nombrado de los Americanos, colindante con el terreno concedido a la colonia del Sr. Sutter y con las *lomerias del oriente.*"

"Situated on the banks of the river named the American, bounded by the land granted to the colony of Señor Sutter, and by the hills on the east."

In the two original grants in the archives already spoken of as forming part of the espediente the same description is given, and it is again repeated in the copy of the grant produced by claimant from his own custody.

The initial point and two lines are here fixed, and have never been disputed, to wit: The point on the river where the Hays survey begins the river in its extension, and the line running north and south from the initial point, which has always been treated on all sides as coterminous with the lands of Sutter's colony. It is evident that the location cannot be extended beyond these assigned boundaries. There is also a terminus towards the east, beyond which the location cannot be extended, because the titles made by the granting power went no further. This is the line of the "lomerias." It would not matter even if Leidesdoff had expressly asked for land beyond these bounds, for we are to seek not what he desired to get, but what the governor chose to give. And in the four documents of title which have been presented as emanating from that officer, the "lomerias" are laid down by him as the extreme limits of the land towards the east. They are laid down in the same instruments and with the same particularity as are the American river and the lands of the colony of Sutter. We therefore contend that the concession can no more be stretched across the lomerias than across any other of the particularized boundaries.

Then we have three of the enclosing lines of the granted tract—the western, northern, and eastern. The fourth line is not fixed in the grant, and is dependent upon quantity for the place in which it shall run. It is therefore the discretionary line, all the others being

fixed, and not to be moved even if there should be difficulty in deciding upon the location of this southern line. By the express terms of the grant, then, it must be satisfied out of land lying southwardly on the American river, and between the lands of Sutter's colony and the "lomerias" on the west and east, respectively, extending southwardly to make up the quantity which may be held to have been granted. For the present we will presume that to have been eight leagues.

Having settled *what* are the fixed boundaries of this land, we next inquire *where* those boundaries are.

There is no dispute about the northern and western lines, but we have to ascertain where are the "lomerias" which are the eastern boundary, and here there is contention. We assert they are to be found in a row of hills arising a short distance from the mouth of Alder creek, at its junction with the American river, and running thence in a southerly or southeasterly direction towards the Cosumnes river, the next stream which flows westward from the Sierra Nevada.

At the hearing below, we were here met with the objection that we had no right to look into this matter at all; that under the circumstances, we were confined to such description of the land as is given in the decree of the land commission, and that from its decree the "Hays survey" may be constructed. The land confirmed is therein described as follows: "Beginning at an oak tree on the bank of the American river, marked as a boundary to the lands granted to John A. Sutter, and running thence south with the line of said Sutter two leagues; thence easterly by lines parallel with the general direction of the said American river, and at the distance, as near as may be, of two leagues therefrom, four leagues, or so far as may be necessary to include in the tract the quantity of eight square leagues; thence northerly by a line parallel to the one above described to the American river; thence along the southern bank of said river, and binding thereon, to the point of beginning." Now, it was said, this description is conclusive and exhaustive of the description of the land; that in its location we can only seek for such land as is therein described; and as the board excluded the "lomerias" from contemplation in describing the tract, we are, in this proceeding, estopped from any examination as to *what* they are or *where* they are. This has always seemed a strange argument to us. We must presume, in the words of Judge Hoffman, when he rejected this sur-

vey, "that neither in this case nor in any other did the board mean to confirm the claim for any other tract than that described in the grant and delineated in the diseño."—(P. R., p. 174–5.) Can we presume that the board deliberately excluded as one of the boundaries a natural landmark called for by every one of the instruments of title produced by the claimants as issued to the original grantee? But in setting up this argument claimants have not quoted the whole of the decree, for immediately after the part above recited the decree goes on continuously to say, "*For a more particular description, reference to be had to the original grant, and to the petition and map contained in the espediente.*"

This must be conclusive. Is not this latter quotation as much a part of the decree as the former? Has not the reference to the description in the grant and espediente, &c., the same effect as if the words had been set out in the decree? And are we now, when in search of the "more particular description," to be estopped from reading the very documents to which the commission has referred us? This would suit the claimants very well, because by disregarding the "lomerias," as unnamed by the decree, they might stretch their claim *beyond* the limit assigned by the grant. But the reference to the grant makes the decree, in law, precisely the same as if the boundary "lomerias" was fully and particularly, and in words, inserted therein, for "*verba illata inesse videntur.*"

In truth, the board intended in this case, as in all others, to give a general description of the land, leaving it for after proceedings by the surveyors or other proper authority to compare and assimilate the land as it exists in nature with its description in the title papers. And that they so intended in this case is placed beyond cavil by their own words. In their opinion delivered by Commissioner Thompson, after briefly passing upon the validity of the original title, they say of the lands: "*The lands are described with sufficient certainty to enable the surveyor, by reference to the original petition and map contained in the espediente, to identify and locate the particular land granted.*" (P. R., 91.)

This is more than the opinion of a tribunal ordinarily amounts to, for by the act of Congress of 1851 organizing the commission, it was made as a part of their duty not only to decide these cases, but to file opinions setting forth the reasons of their conclusions. Shall this court now, in examining the proceedings of the surveyors, close their eyes to the very documents by which the surveyors were ordered

to guide their proceedings? Such at least was the argument we had to meet at one stage of the proceedings below. Whether it will be renewed here we are, of course, ignorant during the preparation of this brief.

We propose, therefore, to proceed with the argument by the light of these papers, of the decree of the board, and of the evidence which was before them, and what is now before us.

We must first ascertain what is meant by the term "lomerias," which is used so constantly by Governor Micheltorena in describing the boundary by which he assigned a limit to the land he intended to grant. The word has been translated at times as "hills," and again as "foot-hills," but the latter translation may convey an incorrect idea. The term *foot*-hills implies a connexion between the hills and a *loftier* elevation at the foot of which the designated hills are situated. That this may lead to confusion is exemplified in this very case by the fact of one witness going in search of these boundaries to *the very foot of the Sierra Nevada*, because he was sent to search for *foot-hills*. The word does not import a necessary connexion with mountain ranges, although it may be, in this case, that there is a certain gradation between all the ranges lying between the valleys of the rivers and the lofty peaks of perpetual snow.

"Lomeria" is a *diminutive* from the word "loma." Now, from the best authorities, the word "loma" is most aptly translated "hillock." Our idea of a hill, as applied to any considerable elevation, is best expressed by the word "cerro." From various dictionaries of Spanish and English, and of Spanish alone, we find the word "loma" translated or defined thus:

In dictionary of F. C. Meadows: "Loma, a hillock; small hill in the midst of a plain."

In dictionary of Velasquez, smaller edition, "cerro" is hill; "loma, rising ground or slope." In larger edition, "cerro," a hill; "loma," 1st. Rising ground in the midst of a plain—a little hill or hillock. 2d. Slope.

In the dictionary of the academy: "Loma, altura o prominencia pequeña y prolongada," a height or prominence, small and prolonged.

In Salva's dictionary: "Loma, altura pequeña y prolongada," a height small and prolonged.

These definitions are given to assist us in our search for those natural objects which, grouped together, formed the "lomarias," so insisted on in the title papers. It is not by any vast or unusual

eminence that this ranch is bounded; it is not marked in its extent by a mountain range, or even an extension of lofty hills, but it is controlled in extent by an elevation which all Spanish dictionaries define as "a height small and prolonged."

Now examine the topographical map in evidence (Colby's.) At Alder creek, and near the banks of the river, we find just such a line of heights rising from the plain at an angle of thirty-five degrees, and *running along in such direction as to be nearly parallel to the undisputed western line of the grant, forming a well-marked, unmistakable boundary to the east!* Can there be a more exact accordance with the definition of a "loma" as given by the Spanish academy? The English lexicons agree in explaining it as "a rising ground in the midst of a plain," "a little hill or hillock." Can there be a closer agreement between the definitions and the hills which here exist in nature? The hills at this point are so described by every witness, although there are differences of opinion as to what are the foot hills of the Sierra Nevada. Elevations such as these were, as we shall see, the elevations described by authoritative witnesses when examined by the land commission in order to form their opinions and frame their decision.

Finding thus, in nature, boundaries which completely fill the description given by the granting power, let us examine how, in the evidence before the board, they were described by those who best could know and whose public duty it was to ascertain and adjust them. In that examination we shall find how the location was understood and fixed by the proper officer of the Mexican government when the grant was first made, by the claimant when the title was first offered for confirmation, and how the bounds must have been limited in contemplation of the board when making its decree. For this purpose we do not propose to introduce affidavits as to what should be the construction of the decree, but shall, as the proper course, rely upon matters which we find in the record, prepared and furnished us, in due order of law, by the tribunal whose action we are considering. To sustain his claim, Folsom introduced two witnesses to prove his boundaries, General John A. Sutter and John Bidwell, each an old resident of California before our acquisition, and perfectly familiar with the country; one of them, General Sutter, the grantee of the adjoining land on the west for colonization purposes, and the legal officer who gave judicial possession. Mr. Bidwell was his secretary, and resided with him for several

years. In his petition the claimant sets up that "the possession of the land granted was duly given to Leidesdorff."—(P. R., p. 4.) In proof of this allegation he introduced General Sutter, who testifies upon that point thus:

"As alcalde of that district, I gave him juridical possession. I cannot remember the date, but I very well remember giving him juridical possession under his title from Micheltorena."

In his second examination (P. R., p. 16) he states in what manner and of what land upon *Leidesdorff's application* juridical possession was given:

"We rode round the place. Leidesdorff wished to know where his boundaries were, and I rode with him and showed them to him. We did not measure the land at that time. We rode from where the old mill-race commenced, up the American to the house, and then on up the river *towards* the hills perhaps ten or twelve miles; then we came in a direction towards the Cosumnes river. It was an *open plain*, and we could see the land and did not ride far in that direction."

In answer to questions by claimant's counsel he said that at the time of giving juridical possession to Leidesdorff he had with him the original papers, including the grant and diseño; that in pointing out the lines on such occasions he would take the diseño for his guide, and ride to the boundaries and notice them and tell the party what they were. Does not every word of this support the position of the government and stamp error on the Hays survey? They rode "round the place." This is almost, if not quite, a physical impossibility over the hills included in the plat. They "rode for the purpose of showing Leidesdorff where his boundaries were; they rode up the river "*towards*," not over or beyond, the hills for ten or twelve miles, then "in a direction towards the Cosumnes river." Measure the plat and see how much further than ten or twelve miles the surveyor has stretched his front before he turns in a direction "southerly" towards the Cosumnes. "It was an open plain and we could see the land." The survey at the eastern end of the tract leads us over a rugged, broken country, almost impassable to a horseman, across successive ridges of hills, which intercept the vision and restrain it to the narrow ravines between them.

This was the juridical possession alleged by the claimant in his pleadings, and proved from the lips of the judge who acted officially. It was under the Mexican law a judicial decision of the location of the land, and as binding as the decision of any other court of compe-

tent jurisdiction. The location was made on the ground, in the presence of the petitioning party, by the proper officer, with the original papers before him, and the decision so made was accepted by the grantee, and put in evidence by the claimants.

The other witness, as to the eastern boundary, was Mr. John Bidwell, also claimant's witness. In common with the others, he fixes the initial point at a certain tree (Sutter's corner) on the American river, and his testimony as to the situation of the hills which form the eastern boundary proceeds thus, (P. R., p. 23, question 8, cross-examination): "What point do you call the foot hills of the Sierra Nevada east from that marked tree?" Answer. "I should consider the foot hills to commence at the first deep gulch that comes into the American river, above Sutter's eastern boundary, from ten to twelve miles therefrom; there is where the land becomes hilly and broken; it is rolling land. I cannot say how high the first hills are."

This testimony is entirely in accordance with that of General Sutter. In giving juridical possession, Sutter rode ten or twelve miles along the river "towards" the foot-hills. Mr. Bidwell *estimates* the distance of the marked tree to the hills as from ten to twelve miles—an overestimate, it is true, if it be measured in a right line, but quite accurate if the line of the river be followed. Both Sutter and Bidwell, by estimate, suppose the river line from the western boundary to the first hills to be ten to twelve miles, thus showing they mean the same place when they speak of the "hills." Four Mexican lineal leagues of 5,000 varas each make a distance of about ten and a half miles, which, by following the river front as one would naturally ride across the country, carries us to about the mouth of Alder creek. How many miles of river front does the survey undertake to include within its bounds? And Mr. Bidwell fixes the point where the hills begin with unmistakable precision by reference to other natural objects. He says, "it is at the first deep gulch that comes into the American river, above Sutter's eastern boundary, from ten to twelve miles therefrom." The government also considers them as the hills intended as the boundary of this tract. They are found "at the first deep gulch emptying into the American river," and now known as Alder creek, and so laid down in all the plats. There can be no reasonable doubt as to this point. At the head of an extended and level plain, near the margin of the river, at the mouth of a deep gulch, they rise rapidly from the plain to the height of about 168 feet at an angle of thirty degrees, and trend across the plain at about the

same height, with occasional gaps or depressions in a south or southeasterly direction to the next water course, the Cosumnes river. Can there be anywhere a more apt illustration of that which is defined as "altura ó prominencia pequeña y prolongada," a height or prominence "small and prolonged?"

So stood the evidence as to the eastern boundary when the board confirmed the land which had been granted by Governor Micheltorena, and of which claimant had proved that the proper alcalde, Juan A. Sutter, had given him the judicial possession. The testimony taken since the case has been before the district court we contend also supports our view. Claimants have introduced elaborate maps, and the person by whom they were prepared, to show, if possible, that the "*lomarias*" did not, in fact, exist where they were said by Bidwell to commence, but the attempt has certainly failed.

A topographical map, marked No. 1, and profile map of elevation with much show of scientific accuracy, were exhibited by this witness, E. B. Goddard, and, for aught we know, may in some respects be accurate, but they fail in the important requisite of evidence of this kind, fairness.

We are inquiring where commence the first chain of hills on the south bank of the American river as we follow its course east from Sutter's boundary, and especially what was the topography of the country about the mouth of Alder creek where hills certainly do exist. The topographical map of Goddard suppresses these hills altogether, or indicates them in such manner as to give no correct idea of their height, extent, direction, or character whatever. There is no table of reference to show what is meant by the arbitrary shadings of the map, which are supposed to represent the topography. Nor is there anything to show, either on the face of the map or by reference, what are the relative heights of different points; so far the map is of little value, but it is then made to appear as if this were done by a profile map, marked No. 2, to show the relative heights. But this profile is fallacious, because, instead of showing the heights of those points which are in controversy here, and meeting, if possible, the objection of the Interior Department to the survey, it evades their examination, and throws no light whatever upon the facts on which they are founded. The United States had objected to the eastern boundary of the plat that it extended over and across a line of hills which struck Alder creek at or near its junction with the American river, and the object of these maps was to show that there

were no hills at that point. To destroy these hills, Mr. Goddard chooses three lines to show comparatively level profiles. No. 1 commences about the western boundary and runs eastwardly, avoiding the river and following the line of a stage road which passes through a gap or depression of the line of hills some three miles south of the junction of Alder creek and the American river. This road, as is common with roads, passes over the very lowest convenient points, such as the American pioneer always seeks for and discovers with almost unerring sagacity. No. 2 commences on the top of the hills on the north side of the American river where those hills are themselves 165 feet above the plain, (see Colby's map,) and crossing the river proceeds on the tops of the southern hills, and shows that the hill-tops on the two sides of the river lie nearly in the same horizontal plane. But it gives no answer to the question as to what change of elevation occurs in going up the river, or what is the relation of the elevation near the mouth of Alder creek to the plain which stretches thence in an unbroken extension to the Sacramento river. No. 3 commences on the right bank (north or west as it may be) and crosses the river at the town of Folsom, and in like manner only shows that the hills on both sides of the river are nearly of equal height, and that those on the eastern side increase in height as they approximate the Sierra Nevada until they become what the witness thinks ought to be the foot-hills, the "*lomarias*" being, in his opinion, the high foot-hills of that vast mountain chain.—(P. 140, answer 23d.)

These profiles, therefore, give no aid whatever to the claimant when he professes to meet the objection of the United States, that there is a "lomaria" at the mouth of Alder creek, which, according to the terms of his grant and of the decree in his favor, prevents his eastern lines being extended beyond that point. Incidentally—unintentionally, however, they confirm the assertion of the United States as to the topography of that region, as will be hereafter shown.

By reference to the profile map No. 2 will be seen near the river a point designated as railroad station of Alder creek; this is at the junction of the creek and river, and is at the level of the rest of the prairie which stretches along the whole south of the river from Sutter's eastern boundary and far below that, from the Sacramento river up to the first deep gulch. Immediately next it is marked Alder creek hill, rising abruptly to a height, as well as we can make out by the scale, of above a hundred feet, and, as shown by the topographical map, "prolonged" to a great extent in a southerly or southeasterly

direction. This chain of hills forms the boundary of the level valley which, up to its base, is as uniformly flat or as gently sloping as is usually to be met with in nature. From some place near the Cosumnes river, south of the southern boundary of this ranch, this "loma" "small and prolonged" stretches, with occasional gaps or depressions, across the valley, until near the mouth of Alder creek it suddenly sinks to the lower level, leaving between its termination and the river a narrow strip of the continuous plain, which the railroad, of course, seeks and possesses. The very location of the railroad shows a change in the character of the country at this place. Below this the road has traversed the valley almost in a right line, pointing directly at the spot where it is to avoid the elevation of which we speak; thenceforward its course is sinuous, winding between hills, and of course searching for the points of greatest depression everywhere. All this we may learn from Goddard's maps. When we examine Colby's, these matters are rendered clearer to the eye, because the natural objects referred to in the decision of the Interior Department are precisely set out. It shows that the account above given of the topography is correct, that the hills at the eastern termination of the plain rise at an angle of 35 degrees to the height of 168 feet, and run in the direction and to the extent described, directly across the plain, which thus terminates where the United States claims that the eastern boundary of the ranch exists. It further shows that the tops of the hills on the right bank of the river, assumed in profile as the base to show the comparative elevations, are themselves 165 feet above the prairie level on that bank.

The testimony of Mr. Colby is clear as to the character of the country. (P. R., pp. 158, 159, 160.) Above this line of hills it is broken and rugged. On going towards the Cosumnes it is not "an open plain where the land can be seen," over which the alcalde rode when he pointed out the boundaries and gave juridical possession under the grant. If the hills do not commence where we assert they do, no point of commencement can be assigned for them short of the Sierra itself. Thus his testimony agrees entirely with Bidwell's, who, in his deposition before the commission, describes the hill as commencing at the first deep gulch that comes into the river, repeats before the court that at that point "it sets in quite hilly."—(P. 112, answer 15.)

Mr. Colby's cross-examination as to hills, &c., it will be seen, was confined altogether to the heights along the depression through which

the Placerville road runs, and has no relation to the general topography. The above-named witnesses, we think, are all who offer material testimony upon this point. It would be the easiest thing in the world to multiply evidence indefinitely as to the opinion of witnesses where "foot-hills" begin, for it is by that name that most of the inquiries about the "hills" were made. But we submit that the evidence of the most intelligent witnesses, and the various maps and plans, point out unerringly, the mouth of Alder creek as the spot where the "lomarias" must be held to commence.

It may be well to observe here that an attempt was made to include the town of Folsom (a very desirable object) in the bounds of the original grant, by producing Mr. Bidwell to point out, upon his plan of the Sacramento valley, a spot within the Leidesdorff ranch where, by measurement by a certain scale, the present town is situated. But this evidence loses all value when we are informed by the witness that his map never pretended to accuracy of location; that it was made in Monterey, and only from general information and the copies of the diseños which he found there; that he does not assert the town to be within the boundaries, but fixes the spot only by comparing the Hays survey with the map and applying the scale thereto, which could be as well done by any other person.—(P. R., p. 111, answers 9 and 12; p. 156, answers 6 to 11.) This sketch of Bidwell's roughly gives a view of some of the ranches which were granted in that section of country, but is of no value for the purpose of accurate location. Any attempt to employ it for that purpose would produce inextricable confusion, and it has never been so used by any court. But from an inspection of this plan, it is very evident that the idea of this gentleman as to the figure, &c., of Leidesdorff's land is very different from that of the person who constructed the Hays survey.

As to the quantity of land for which the grant was made, the court is respectfully referred to the photographic copies of the original documents. The originals are in the proper place of deposit—the archive office at San Francisco—and the photographs are in the record. They need no explanation. Upon the question as to which shall prevail, when, in these cases, there is a discrepancy between the documents preserved in the archives and those produced from the custody of the claimants, the court is referred to the following authorities:

Owings *vs.* Hull, 9th Peters, 625.

1 White's Recopilacion, pp. 297, 298.

U. S. *vs.* Sutter, 21st Howard, 175.

U. S. *vs.* Bolton, 23d Howard.

U. S. *vs.* Castro, 24th Howard.

We have now called the attention of the court to the facts connected with the original grant to Leidesdorff of the land now claimed. We contend that in this proceeding the court has a right to inquire into the fact as to what land did pass to Leidesdorff by virtue of that grant, and for that purpose may examine the original documents connected therewith; that under the decree of both the commission and the district court for a particular description of the land, reference is to be had to the original papers in the espediente, and the surveyor is required to refer to them in order to identify and locate the land.

That the original papers disclose that Leidesdorff asked for a tract of land for grazing purposes on the American river, next to Sutter's land, and four leagues by two, without assigning any specific eastern boundary.

That when the governor came to exercise the granting power, he did not grant the land by dimension as asked for, namely, four leagues by two, but insisted upon introducing another term, viz: an eastern boundary, beyond which the grant was not to extend.

That this boundary introduced by the governor is repeated in four documents put in evidence by the claimant, and in this respect the grant, as suggested by the petition, was modified by the granting power.

That in these four documents, the governor assigned three fixed and certain boundaries, within which the land granted—six or eight leagues, as it may be—must be contained, leaving, as a necessary conclusion, that the fourth boundary, or closing line, was to be regulated by quantity.

That the land was described as situated on the American river, bounded by the land of Sutter, and by the "lomarias" on the east, thus giving the north, west, and east boundaries as things definite and fixed, leaving the southern boundary indefinite, and to be thereafter ascertained and made certain.

That the western boundary is undisputed, and the northern cannot be disputed, except as to the distance: it must run to reach the eastern terminus of the grant which has become the principal ground of dispute.

That there exists in nature a line of hills in the eastern direction pointed out by the grant, which are shown by the evidence of witnesses and the maps and topographical delineations in the record, and

which possess these characteristics: 1st. They answer the description of the eastern boundary given by the governor. 2d. They commence on the admitted north line, (the American river,) at a point marked by another unmistakable natural object, (the mouth of Alder creek,) and are pointed out by the claimant's witness, Mr. Bidwell, as being recognized at the time of the grant as the natural objects corresponding to the description of the eastern boundary. 3d. They extend from the north line in a southerly direction, nearly parallel to the western boundary. 4th. By connecting them with the western boundary by a straight line at right angles to both, and at such distance as to include with them and the northern boundary the quantity which was granted, a figure is constructed as near as possible such as was required by the Mexican law—say a rectangular parallelogram. 5th. The tract thus enclosed corresponds in character and description with the land of which judicial possession was given by the proper judicial officer, John A. Sutter.

From which facts and principles we hold it to be clear that the land granted to Leidesdorff, and described in the espediente, is contained within the bounds contended for by the United States, and is substantially shown by the Mandeville survey.

It is not necessary, in coming to the conclusion which we have reached, to rely upon the familiar principle that in locations such as these, natural boundaries will control conflicting calls for quantity, course and distance, &c., for there is no conflict. The quantity which was granted, either six or eight leagues, is readily obtained within the three bounds specifically called for, and the undetermined line left to be adjusted by the quantity.

All conditions, both of boundary and quantity, required of the land by the grant, attach to and exist in the location contended for by the United States, and fully and plainly exhibited in the Mandeville survey, while the Hays survey is full of contradiction, uncertainty, and confusion.

Claimants, in filing their petition for a rehearing below, laid great stress upon and inserted in their written argument sundry extracts from the "ordenanzas de tierras y aguas," to show in what manner the measurement of public lands should be made, when they were transferred to private ownership. Certainly the United States, at least in this case, have never contended for any other mode than the one there indicated. It is not only admitted by appellants, but insisted on, that all the authorities inform us that it was the policy, if not the express command of Mexican law, that in making grants of

"criaderos and sitios, the measurements should be made from north to south and from east to west, as far as the nature of the land would permit, and thus lay out the country in a series of rectangular parallelograms, as near as might be; and one may further consult the 'ordenanzas,' ch. 10, de las medidas agrarias," tit. Sitio de Ganado mayor, pp. 157, 160, edition of 1855. But this quotation and reference is unfortunate for the claimants, for it provokes a comparison between the Mandeville survey—compact, rectangular, measuring from north to south and from west to east, complying with the requisites of the "ordenanzas," and the Hays survey, curious, irregular, six sided, and disobedient in every respect to the requisites of the ordenanzas. Surely an inspection of the latter plat will not commend it to one who adopts the system of location under either the Mexican or our own law. To us it seems that this examination must of itself conclude the argument.

We have examined all the evidence of any consequence relating to the true location and bounds of the ranch, as well as the character of the country. It would be prolix and useless to attempt an examination of all the testimony and statements unsupported by evidence, such as Buzzles, p. 151, who had the boundaries of the ranch pointed out to him "by a man named Sam Neal, a blacksmith in the employ of J. A. Sutter." Testimony of this kind may encumber a record and confuse argument, but cannot aid the mind in coming to a correct conclusion. It must be left for just what it is worth, which is nothing.

So far the case has been examined upon such evidence as was mutually adduced by the parties, but there remains something to be looked into, which, as it seemed to have much influence in forming the judgment of the court which is appealed from, requires from our hand comments which, in its own nature, it would not deserve. That portion of the record as printed must now be taken up, which is not evidence at all, and which, in strictness and propriety of law, is not a record at all.

After all the evidence which is in the case had been taken, the cause was argued by the respective counsel and submitted to the court about the 16th of May, 1861, and on the 18th of November Judge Hoffman filed his opinion and decree, setting aside the Hays survey and ordering a new one.—(P. R., pp. 172, 176.)

Upon this certain of the claimants, through their counsel, Messrs. R. A. Thompson and A. P. Catlin, filed a petition for a re-hearing, based upon certain arguments, affidavits and authorities, all of which

are copied at large in the record. It would seem that these arguments and authorities would find a more fitting place in a brief of counsel than in the record of a court; but that apart, we ask leave to call attention to these proceedings.

First let us observe, that for any facts here originally brought to the notice of the court there is no evidence whatever beyond the affidavits of the counsel for claimants; for, without ordering any further evidence to be taken, Judge Hoffman thought it right, upon this motion, to reverse his former decree annulling the Hays survey, and in turn to confirm said survey and location by his final decree.

There are some thirteen separate reasons set forth by claimants to show wherein the court had erred in its first decree. A brief commentary will be made upon such of them as seem to merit notice at all; confining ourselves as much as possible to the bare legal aspect they present, and avoiding the further remarks which their unusual nature might provoke.

And first as to the ground numbered 1, which represents the recent discovery by claimants of the fact that the *district court* had confirmed the claim. For its proper understanding, we must bear in mind that at the first hearing before the district court it had been contended by claimants that in locating the land we were to be guided entirely by *the decree of the land commission*, and that the subsequent confirmation by the *district court* was not, under the circumstances, to enter into consideration at all. Proceeding further with the argument, it was then insisted that under the decree of the land commission the Hays survey showed the only correct location of the ranch. Both these propositions were combated by the United States, and it was urged that under either or both these decrees the survey was erroneous and should be rejected. Judge Hoffman, in his first opinion, seemed to coincide with claimants in their first proposition, that he was bound by the decree of the land commission, but further held that, under that decree, the location shown by the Hays survey was untenable. (See his first opinion, P. R., p. 172.) Hence it was discovered that it was the court and not the land commission which finally confirmed the claim; and, therefore, it was the decree of the court, and not of the commission, which was now to be executed and made productive by a location, survey and patent. Of course, then we had all been in error in following the decree of the land commission, and new matter must now be considered, as it is the decree of the court which is to be enforced. But it will hereafter be seen that the counsel for claimants were not unanimous in this discovery, as a glance

at the affidavits by which it is supported will presently show. In their 2d, 3d, 6th, 7th, 8th and 9th grounds, claimants put forward an argument upon which it seems to us they principally rely for the confirmation of their survey. Under whatever form it assumes, in whatever set of words and phrases it may be couched, the ground relied upon consists solely in this, that during the litigation a certain portion of claimants bought into the claim, and therefore their opinion as to what it was they were buying should be conclusive of the question. Analyze their position—what else is it? Here are the facts: Soon after the decree of Judge Hoffman, made in 1857, the Natoma water company bought from one who purchased of the executors of Folsom a large tract of mineral land, under the supposition, as they allege, that it would be included in this tract by a correct survey. No matter how repeatedly and persistently they may protest that they purchased "after the final survey had been made and approved," the fact cannot be doubted that they purchased *before* the final survey and confirmation. For the final survey and confirmation has not been made yet. This very case is for that purpose, and claimants initiated proceedings to that end. Is it not the strangest of arguments to say that a third party has bought upon the faith of a final decree of a court, when he is at that moment urging upon the court to make a final decree in his favor? In truth, they bought upon the *chance* that the Hays survey would be finally confirmed. They purchased upon this speculation, whilst the litigation was still pending between the United States and the successors of the grantee, and have no higher or other rights than had those from whom they claimed title. They bought whilst the consideration of the survey was still pending before the Interior Department, and if a precocious speculation proves unprofitable, the purchasers cannot be aided here. The United States cannot be deprived of their rights because the parties have chosen to interpret the extent of those rights for themselves, instead of waiting until the appointed tribunals shall have acted. A purchaser, "pendente lite" cannot disturb the rights of adverse parties by intruding himself into the discussion. So much for the action of this set of claimants themselves. Nor are they strengthened in their argument by the suggestion that they purchased with leave of probate courts, and that other State courts have passed upon the boundaries of the land as they desire this court to pass upon them. If there is any proposition of law beyond dispute, it is that in the segregation of private lands from those which are the property of the United States, the

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State tribunals are to follow the decisions of this court, and not to dictate them. The courts of California cannot, on these subjects, influence by anticipating the decree of this court.

In any event, it would be a facile mode of proving absolute title, perhaps not otherwise free from difficulty, by showing simply that lands had been bought at a probate sale. Questions of title are not usually acted upon by probate courts as against third parties not interested in their proceedings. And, as a matter of fact, notwithstanding the allegations of the 9th ground, *we deny that in the supreme court of California any decision has ever been made as to where the disputed boundaries of this land are to be found, and we challenge the production of any such case.*

The 11th ground is one which in improper language makes insinuations of certain matters that should not have been permitted to rest in insinuation. It speaks of fraudulent action before the Secretary of the Interior, to influence his decision, and of his conduct being "illegal and arbitrary, without any authority whatever, and in direct conflict with the decisions of the United States Supreme Court." Claimants' counsel seem to have been, throughout the argument, in happy ignorance of the decision of this court in Castro and Hendricks, 23d Howard, where the ruling was to the very point denied by this ground, and where the land department was sustained in doing the very thing it did in this case, viz., refusing to approve a survey which it deemed improperly made, or to issue a patent thereon; and surely as to the charge of fraud the counsel should have been prepared with some evidence, or, at least, *affidavits* to sustain them in this scandalous allegation. The Hays survey, *made in advance* of the decree of the district court, (see affidavit of Mr. A. P. Catlin, p. 191, that the Hays survey was made in December, 1855, and decree rendered in February, 1857,) must have been the survey of the claimants, for in no other way would it have been made before the decree, and it doubtless was, in the manner usual at that time, forwarded at the instance of the claimants to the Interior Department. If thus the counsel allege it was brought up "in a secret and fraudulent manner," it must have been by acts of claimants, and we have no concern in repelling the charge. If, however, they mean, directly or indirectly, to charge openly, or insinuate covertly, any misconduct on the part of the United States, through its agents or officers, the reply would of course be brief, but very explicit.

It may not be out of the way to remark that comment upon the

decision of the land office in rejecting the Hays survey comes with bad grace from those intervenors who are represented by counsel, who affirm that before being "interested as purchasers of the land they now claim," he was himself of the same opinion as the land office with regard to that survey.—(See affidavit of Mr. A. P. Catlin, p. 191, P. R.)

With great care for the interests of the United States, the 13th ground complains that government occupies "a position antagonistic to its own interests, and contrary to its own policy." But the government seems content with the management of a case which, in insisting upon a proper location of land, seeks to prevent the exchange of grazing land for mineral land, which its policy has been to preserve in its own ownership, for such purposes and to meet such contingencies as public necessity might require. Claimants, too, seem not to be aware that in opposing their plat in the district court the position assumed on behalf of the government was the one selected by the officers of the land office, upon whom, rather than upon adverse claimants, the law has rested the duty of protecting the interests of the United States.

The 12th ground finally complains that the court in rejecting the location of claimants sought to improve upon the judgment of the board of land commission, whilst it had no right to do anything more than to carry out that decree. This is, undoubtedly, rather inconsistent with the allegations made in the first ground for rehearing, and strengthened by affidavit (p. 178) that the claim had been confirmed by decree of the court. If so, the court was executing its own decree, and not that of the lower court. It is not for us to reconcile these directly conflicting assertions that none of the alleged authorities even pretend to discuss the matter in issue, viz: *Where* and *what* are the true boundaries of the Leidesdorff grant?

As to the case of Mott *vs.* Smith, 16th California Reports, p. 550, &c., (quoted at p. 189 of P. R.,) the point there decided was that in an action of ejectment in a State court, a Mexican grant confirmed by the United States tribunals could not have its validity impeached—a proposition to which we have not the slightest objection as a rule of law, nor of which we have the slightest perception of its applicability in this case.

The principal case relied upon is that of the Natoma Company *vs.* Clarken, 14th California Reports, p. 548, &c., in which some of the intervenors here were plaintiffs in an ejectment in the State court.

ERRATUM.

[Strike out the three first paragraphs on 33d page and insert them as follows: between 2d and 3d paragraphs on 26th page, after the words "what are the true boundaries of the Leidersdorff Grant."]

There is nothing as we think requiring notice in the other grounds; and having submitted our general argument, it only remains for us to examine authorities cited by claimants as conclusive in their favor.

With regard to those taken from the Mexican book of authority, (Ordenanzas,) we heartily concur with claimants that they were authoritative directions to the granting officers so to dispose of the public lands as to form as nearly as may be, right-angled parallelograms, with the lines of their sides running from north to south and from east to west. Now presuming that the Governor intended, in this instance, so to make his grant as to comply with these rules, the result will be a figure as adopted by the Interior Department and delineated by the Mandeville survey. This authority, therefore, furnishes an additional reason why the decision by the land department should also receive the sanction of the court.

With respect to the decision of the California courts, quoted in the record and cited by the claimants as if quite conclusive of the questions we are discussing, we ask leave to repeat our point taken above, that, in passing upon like questions of grant and segregation, the United States courts are not only in no wise bound by the decisions of the State courts, but that State courts, superior or inferior, are bound to regard the decisions of this court as conclusive, and to render their fitting obedience.

Besides this, we will shew that the California cases give no support to the position in whose aid they are cited: which is that the Hays plat exhibits the true location of the land in controversy.

The suit concerned some of these lands; the tract then in dispute lying above Alder creek, and in that part of the Hays survey denied by the United States. It must be upon the authority of this case that the intervenors have so boldly asserted in the record, over the signatures of their officers and counsel, "that they have, in the district court of the sixth judicial district of California, and in the supreme court of said State, upon appeal, recovered judgments for the possession of lands so purchased as aforesaid."—(P. R., p. 179, art. 9, and repeated in a somewhat similar manner in other places.) We shall respectfully ask leave to doubt whether this case quite sustains so strong an expression as that intervenors "had recovered judgments for the possession" of these disputed lands. And we candidly doubt, for the simple fact that in the cited case no lands whatever either were or have been as yet recovered. And we further feel bold to say, from an examination of the report, not only that such judgment was not given in either the district court, sixth judicial circuit, or in the supreme court of California, but could not and would not have been given whilst the respective places were filled by the eminent gentlemen who then administered justice through their respective organizations.

The report shows that the Natoma Company brought ejectment against certain individuals for some of this land, and, under the California system, also sued out an injunction against defendants at the time of filing the complaint. Upon a certain showing, the defendants, at a subsequent time, but before the trial, moved for and obtained a dissolution of the injunction. This was the first point in the case, and the supreme court held that under the local statute there was error in dissolving the injunction, which was consequently restored. At the trial plaintiffs offered in evidence, "*inter alia*" the original grant, the decree of the land commission, and proceedings in the district court, which were ruled out by the presiding judge.

Plaintiffs took a non-suit, with leave to move above to set it aside. At the hearing, the supreme court held that these documents should have been admitted in evidence, and therefore the non-suit was set aside, and a new trial awarded. In fact, all that the court decided on this point was that certain documents were admissible, and should have been admitted in evidence. It would have been a novelty in jurisprudence for a supreme court to have awarded judgment for possession of lands upon an appeal from a non-suit, and upon evidence which had not been yet introduced into the case. Therefore,

we say that no such judgment as intervenors claim in their favor either has been, or could possibly have been, rendered. If any other case has been decided on the subject of these lands, it has eluded our search through the reports, and we are satisfied, had there been one, it certainly would have been cited in the record by the counsel for claimants.

Nor did the court undertake to declare where and what were the boundaries and location of the ranch. Nor did they decide, as intervenors seem to suppose they must have intended, that the Hays survey was correct. Indeed, that survey does not seem to have been in the case at all, nor did they intimate that the land now disputed was within the grant or its confirmation. What they did decide they expressed thus:

"They (the decrees, &c.) were, in fact, taken *in connexion with the grant*, conclusive of the right of plaintiffs to recover, *provided the premises were within the designated boundaries;*" thus, of course, leaving open the question which we are now discussing, viz: What premises are within the designated boundaries of the grant and its confirmation?

But it has also somewhere in the argument been suggested that the decrees below—one or the other—were confirmations with *specific* boundaries, therefore final decrees, and that intervenors purchased a perfect and complete title, and are entitled to have confirmed to them the Hays survey, which, they contend, was specifically set out in the decree, and they affirm that such was the meaning of the supreme court of California, in saying "the decree of the commission, rendered final by the withdrawal on the part of the United States of any appeal therefrom, is not only conclusive evidence of the validity of such grant, and its recognition by the United States, but also of the location of the specific quantity granted." "A patent of the United States could have no greater effect upon the title." The last proposition is rather too broad, for under our system of patents not only are boundaries described, but set out by the plat attached to the patent, and thus every one is informed not only *what* the boundaries are, but *where* they are—a distinction sometimes overlooked in the argument. We think it will hereafter be seen that the court of California is misinterpreted, if we accept the meaning placed upon the Natoma case by the Natoma Company. We are very sure that the original claimants will not concede that the decree of the land commission made a *final* confirmation of the land with *specific*

boundaries. Now, we contend that it is employing the term with great laxity to say of a decree, such as that of either the land commission or the district court, that it is specific in the location of the quantity granted. Can that be a very specific decree which has to refer for a "*more particular description* to the original grant, and to the petition and map contained in the espediente?" Could the commission have supposed that the land had "specific" boundaries when, in filing the opinion which the statute required of them, they said "the land is described with sufficient certainty to enable the surveyor, by reference to the original petition and map contained in the espediente, to identify and locate the tract granted?" Looking to the documents to which we and the surveyor are referred, are the boundaries "specific," in the final grant which gives land lying on the river, and bounded east and west by lines and objects which have to be sought for, and to the south by a line which has no existence, until those objects are ascertained and quantity adjusted? How could the board be "specific" when they had no information as to the topography of the country, and evidently misunderstood its nature? Where were the "specific" lines which they desired to be run easterly from the extremity of the southern boundary parallel to the general direction of the river, and at a certain distance, as near as may be, so as to include "quantity?" Are these what are properly designated "specific" boundaries, or are they not matters of search, of computation, of construction? And how "specific" could the board be when they had no evidence before them of the "general direction of the American river," except that which must have misinformed and misled them, even if they had desired to be precise? From the many plans before the court—all in the record—it is plain the general direction of the river, from Alder creek to Sutter's line, is nearly from northeast to southwest. The board had none of these aids; they date existence from a later period than the confirmation by the board. But they had two sources of information, both incorrect on this point. In the original diseño to which they refer for elucidation of their decree, the river flows nearly east and west; and claimants proved, by Mr. Bidwell, (P. R., p. 22,) that the general direction of the river, from its mouth up to the hills, was east.—(P. R., p. 21, answer 6, and p. 22, answer —.) As this was all the testimony before them, they must have concluded that the diseño gave an approximately correct idea of the general direction of the river, and the configuration of the land. When, therefore, the

board directed one boundary to run parallel to the general direction of the river, they must have intended it to run as they were informed the direction of the river was—that is, from east to west; and thus framing their description from the diseño to which they referred, and from the evidence of the principal witnesses before them, they laid down a figure which would have nearly complied with the calls of the grant, had the surface of the ground corresponded with the diseño and its scale—that is, it would have been bounded by the river and by Sutter's line on two sides, north and west; its southern boundary, about four leagues in length, would have extended to the "lomaria" on the east; and a due north and south line would have struck the American river at or about the mouth of Alder creek. But as the true lay of the land differs entirely from the representation of the diseño, both in figure and proportions, the verbal description becomes erroneous, and the location, which is said necessarily to result from its terms, distorts the ideas of the board, one of which certainly was to confirm a tract at least approaching the form of a right-angled parallelogram, and not the irregular, curious, and unauthorized haxagon presented to us by the survey.

But, if we employ each of the things referred to by the board for the purposes for which they were each originally designed, we have no difficulty in carrying out the general intent of the decree. The diseño was intended by Leidesdorff simply to designate the connexion of the lands applied for with the lands of Sutter, and not as a delineation of the whole tract, for, in his original petition, he asks for land "bounded by lands of Señor Sutter, as shown by the annexed map which he duly transmits." And in this view claimants concur with us.—(P. R., p. 180.)

The diseño, then, is to be used only to mark the initial point of the grant—that is, Sutter's oak tree. The title papers emanating from the governor (contrary to a common custom) make no reference to the petition and diseño, but give their own description of the lands granted, and introduce a boundary beyond which they must not extend. They strike out the relative proportions—4 leagues by 2—suggested in the petition, as that might have introduced a repugnancy; but, granting a certain quantity, and leaving the southern line undetermined, the description of the land is complete in itself, and easily traced on the earth.

In fact, in following the directions of the title papers, there is no difficulty in making a location complying with all the calls of the

grant and the requisition of law. The only difficulties which appear to exist are those which arise from an attempt to force the location and stretch the survey over a territory never contemplated by the granting power. And to effect this, the court will perceive the order and dignity of the papers referred to are entirely reversed; that is, the petition and diseño are made the principal elements for ascertaining the location, whilst the provisional concession and final title are subordinated to them.

It seems almost superfluous to contend that where there is any conflict between them—the grant, and not the petition—the expression of the will of him who gives, and not the desire of him who asks, must prevail; and yet this fallacy will be found lurking through all the argument, such as it is, presented in the record. There is no difficulty about the survey, if we use the petition and diseño to find the initial point of the grant; and then, to locate the grant at and from that point, follow the words repeated, identically, by the governor in the four different instruments of concession which have been put in evidence.

Now, can a description such as we have been examining be called a decree, with "specific boundaries?" Is it so precise, so "specific," that no question could reasonably arise under it? Does it surely follow that when the United States dismissed its appeal in the usual form, it necessarily confirmed a tract of land whose bounds, dimensions, form, and position on the earth were so unmistakably pointed out that nothing further could be required save delineation on a plat for convenience of reference, and that tract the Hays survey?

Is it correct to say, as a fact, that "a patent of the United States could have no greater effect upon the title," and that, "so far as the title is concerned, the boundaries of the land being given, its segregation, in other words, from the public domain, being made by the decree itself, nothing further could be required?" Why, the facts of this case disprove that. For, under the decree, claimants construct one figure—the Hays plat; the land office, when the case was quasi-judicially before it, called for an altogether different location—the Mandeville survey; and the district court at one time decides for still a third—the Beale survey; and, finally, consents to the first, although the judge still thinks it wrong, "for, notwithstanding all that is urged to the contrary, it is plain that when the board directed the southern boundary to be run easterly by lines parallel with the general direction of the river, and thence northerly to the river, they

supposed the course of the river to be nearly easterly, and that the last line would be at, or near at, right angles to it; nor could they have anticipated that a due north line would include within the tract the long tongue of land referred to, and increase so largely the frontage on the river."—(P. R., p. 199.) So that this very "specific" decree, which does not need interpretation, and which was intended to foreshadow so accurately the Hays survey that any one might purchase as safely as if patent had already issued for it, turns out, when employed for the purpose of fixing the location, to be so vague and difficult to be laid out on the earth as to receive three entirely different constructions by the three different parties who have been concerned in the location.

These considerations destroy all force in any argument based upon the supposition that the decree of the land commission so necessarily and exclusively described the Hays survey, in advance, as to justify a purchaser in believing that the United States and its courts were conclusively bound to issue its patent for that, and that only, location and survey.

In fact, however, there can be no doubt that the board intended in this case, as in the general run of their cases, to do no more than to confirm the title according to the title papers, leaving the correct and particular location to be afterwards adjusted by a comparison of those documents with the true conformation of the land; and so, in dismissing its appeal, the United States also could have intended, and actually did, no more than to consent to be bound to the validity of the title, and the issuing of a patent for such land as was called for in the title papers to which the decree and opinion referred for a particular description.

But there is an authority from the California courts which shows that intervenors have mistaken the meaning of those courts if it is supposed that they meant that the proceedings in the land commission and district court, up to the entry of the order of April 30, 1857, (P. R., p. 106,) were final and conclusive, so as to assure a purchaser the case was at an end, and that the government was bound to confirm his purchase without further examination. It is the case of Johnson *vs.* Van Dyke, (20th California Reports, pp. 2, 25,) where it was held that the only complete evidence of the confirmation of a title in these cases was to be found in the patent from the United States.

There is nothing, as we think, requiring notice in the other grounds; and having submitted our general argument, it remains for us to examine authorities cited by claimants as conclusive in their favor.

With regard to those taken from the Mexican book of authority, (Ordenanzas,) we heartily concur with claimants that there were authoritative directions to the granting officers so to dispose of the public lands as to form, as nearly as may be, right-angled parallelograms, with the lines of their sides running from north to south and from east to west. Now presuming that the governor intended, in this instance, so to make his grant as to comply with these rules, the result will be a figure as adopted by the Interior Department, and delineated by the Mandeville survey. This authority, therefore, furnishes an additional reason why the decision by the land department should also receive the sanction of the court.

With respect to the decision of the California courts, quoted in the record and cited by claimants as if quite conclusive of the questions we are discussing, we ask leave to repeat our point taken above, that, in passing upon like questions of grant and segregation, the United States courts are not only in no wise bound by the decisions of the State courts, but that, on the contrary, the State courts, superior or inferior, are bound to regard the decisions of this court as conclusive, and to render their fitting obedience.

In this case it became necessary to fix the exact point at which the general confirmation of title becomes definitively attached to any particular tract, and the court state their views fully on the subject.

In speaking of the date of the definite confirmation of the Frémont ranch, they say: "Where the grant is of a certain quantity without specific boundaries, lying within an area of larger extent, as was the grant under which Frémont claimed, the survey is essential to give precision to the title and attach it to any particular tract. Until the survey is made and approved, the title in such case is only confirmed generally; it is not definitively confirmed to any particular premises.—(Waterman *vs.* Smith, 13 Cal., p. 373)

"The confirmation to which the act of this State refers is the definite confirmation. It is the recognition of the validity of the title to certain specifically described premises by the government—that is, by the executive department which exercised supervision and control over the subject of the location of confirmed Mexican grants, as well as the judicial department—and supposes not merely that the tribunals of the United States have finally acted, but that the subse-

quent survey has been made and approved. Such recognition finds its authoritative expression only in the patent. Under the late act of Congress vesting the supervision and control of surveys in the United States district court, it was generally supposed by the profession that the approval of the surveyor general of the United States for California gave validity and conclusiveness to the survey, and such was the opinion when the case of Waterman *vs.* Smith was decided. The subsequent decision of the Supreme Court of the United States, in Castro *vs.* Hendricks, (23 How., p. 430,) determines otherwise, and that the Commissioner of the Land Office exercises a supervision and control over the acts of subordinate officers charged with making surveys. There was, then, no absolute finality to the survey of the claim confirmed to Frémont until it had received the approval of that officer, as well as the approval of the surveyor general for California. His approval was followed and evidenced only by the patent. Until then it could not be said that the government of the United States, or its legally constituted authorities, finally confirmed the premises in controversy."

In the principal case, too, we are considering a grant of a certain quantity of land within external boundaries, and the supreme court of California informs us at what time the confirmation becomes definite. Then it is, of course, that the government becomes bound to a purchaser, and that it is estopped from ever drawing into controversy the fact as to what land it has designed to confirm, and has confirmed. But up to that point in vain can a purchaser under a grant set up as against the United States the fact of his purchase to compel this court to confirm to him his bargain. He bought upon his own judgment, and must abide by it. Neither courts nor law officers of the government are authorized to disturb its rights for any such reasons.

In the present case, if intervenors claim that the decree of the board operated as a "definite confirmation," with "certain specifically described" boundaries, we think the parties, appellees, will be found at varianee among themselves. It is most improbable the original claimants would consent to a position which sets the statute of limitation running as of the date of June, 1855. We are certain the creditors of the Folsom estate would not; for they would not waive the benefit of a decision justly extolled as so beneficent to California claimants under Mexican grants.

We have endeavored to follow and reply to arguments of claim-

ants to sustain the Hays survey, and we hope with success. But, at the close of their case, claimants have employed a method of addressing the judicial mind which, to us, appears somewhat novel, and we think, on principle, somewhat objectionable. We allude to the affidavits of counsel at pages 189 to 193, and we trust to satisfy the court that, substantially, if not formally, they should be stricken from the record.

These affidavits are intended to instruct the court as to what were the meaning and intent of the two tribunals—the land commission and the district court—when they, respectively, confirmed the title to the ranch. The affidavit of Commissioner Thompson explains the decree of the land commission; the affidavit of Mr. Catlin explains the decree of the district court. It is needless to add that the inference to be drawn from them is that both tribunals intended to confirm the claim precisely as exhibited in the Hays survey; although unfortunately the record is silent as to any such design, and in itself refutes such intent. Mr. Thompson states that he was the member of the board who prepared the opinion and decree, and consequently knows all the board knew and intended. As he appears as counsel for the claimants in support of the Hays survey, it is evident that he intends by his affidavit to show that the board intended by their decree to locate the land as that survey does.

We object to this being considered and treated as evidence for several reasons:

Because it seeks to put in evidence, as having been before the board, still another survey, of which there is no trace in the record either physically, or by evidence, or by note or registry, or even by allusion in the opinion or decree of the board, although it is alleged to have been mainly employed in preparing the opinion and decree:

Because the United States had no opportunity to cross-examine the affiant, who spoke on the 30th November, 1861, from memory, as to a plat which had been before him in June, 1855:

Because the opinion of the board, in the record, plainly indicates that the board intended only a general confirmation of title, and that the particular location of the land was not specially considered by them, inasmuch as the conclusion arrived at was that the lands "were described with sufficient certainty to enable the surveyor, by reference to the original petition and map contained in the espediente, to identify and locate the particular tract granted;" and further, because there is no suggestion of argument or inquiry on that point,

whilst the whole litigation turned upon the question of Folsom's succession to the title:

Because, when "*the original file of papers was laid on the commissioner's table, accompanied by the plat,*" the said plat was improperly and surreptitiously among them, being the plat of a private survey, unproved, unfiled, unnamed in the record, and should have been rejected for any purpose:

Because, if the record in the district court was deficient, it should have been amended by the usual process, and not by ex parte affidavit:

Because the use of a plat to construct a decree by, and the sending up of a record without it, would have operated as a surprise upon the Attorney General of the United States when he dismissed an appeal from a decree which referred only to the original papers, but which was to be interpreted by an instrument of whose existence he could not be aware:

Because the affiant commissioner was only one of the members of the board who joined in the decree, and "non constat," but the other members might never have seen the plat in question, nor intended to consent to more than was set down in the record, and we submit, to have complete evidence, we should have had his affidavit also:

Finally, because the affiant was the judicial officer who framed the decree and delivered the opinion.

We protest against its being received for fear of the possible precedent into which it may be construed. Several hundred cases like this, with similar decrees, have had their appeals dismissed by the United States. Shall the members of a defunct tribunal, whose proceedings exist in and among the solemn records of the land, be hunted up to explain to us by affidavit what the commissioners meant by their decrees, and how they must be interpreted and applied? What would not be the scandal if this were to harden into a practice? When and where has it been allowed that a judge, after he has left the bench and returned to the bar, should instruct a court by affidavit how his ancient decrees were to be construed?

These records, like all others, must speak for themselves.

The decree of the board was now interpreted by the affidavit of one commissioner, but there remained a doubt whether the court might not consider that having once delivered an opinion, and made an order for a decree before the appeal was dismissed, it should follow its own conclusions, which would overrule those of the board. As

the court had held in November, 1861, that the Hays location was not the correct one, it became necessary to undeceive it. For this purpose it had to be reminded that in 1857 it had made a prior order by which it should be conclusively bound to confirm the Hays survey. It was true that the court had not decided that point, so far as could be collected from the record, having contented itself with ordering a confirmation of the land as it was described in the original papers. But at this juncture the other counsel, Mr. Catlin, fortunately recollected certain things demonstrative of its intention, and was able, by his affidavit, to instruct the court how to interpret its own written opinion and order. Now, we renew as many of our above-recited objections as are applicable to this affidavit, and generally to this mode of showing the former intention of a court by the ex parte affidavits of counsel and parties in a cause, and we add some other considerations peculiarly applicable to the present document.

We submit that there is an unseemly contradiction between the memory of affiant and the recorded opinion of the court. From the affidavit we collect that the intervenor being, in 1856, of the same opinion with the agents of the United States, obtained leave to appear by his counsel, Mr. Calhoun Benham, and oppose the confirmation in the district court. That at the hearing the point now under discussion was fully argued, and for that purpose not only were the original title papers, espediente, grant, diseño, and depositions contained in the transcript, "*referred to and examined at length both by the attorneys and court,*" but a plat of the Hays survey, which had already been completed, was produced and also examined. It further appears that at the hearing and argument "the *only ground of objection* by said Calhoun Benham, esq., was that the decree of the board was erroneous in its description of the boundaries of the grant." Yet, when we refer to the opinion of Judge Hoffman, (P. R., p. 104,) we find no mention at all of "the only ground of objection" said to have been made to the confirmation. In fact, the right that Leidesdorff would have had to a general decree for confirmation, and that portion of the order for a decree which related to location, seem to have passed uncontested. But the opinion shows there was a point made by Mr. Benham against the confirmation to Folsom for want of correct deraignment of title. The account of the argument and objections is given by the court as follows, (P. R., p. 104):

"The claim in this case was confirmed by the board. The au-

thenticity of the grant to W. A. Leidesdorff was not disputed, but a question was made whether the land had not escheated to the Mexican government on the death of Leidesdorff, without heirs who were Mexican citizens. This question appears to have been elaborately argued before the board, and was decided in favor of claimants after a full examination of Mexican law applicable to the subject. The objection was not renewed in this court by the district attorney, but a brief has been filed *by counsel employed to contest the claim, in which this point is taken.*" The court then expressed its opinion on the question of escheat in a few words, and ordered a confirmation of the land as described in the title papers.

There is, then, this variance between the affidavit and the opinion of the court: By the first, it seems there was only one point taken against the confirmation. By the second, it does not appear that that point was taken at all; by the second, it is evident the case turned upon another point, which the first denies could have been taken at all. Even conceding that it is proper to interpret orders of a court of record by the affidavits of counsel and parties, we submit it is not seemly under such guise to introduce matters so directly, or by necessary implication, contradicting the statements of the court.

But it really seems to us that there is some mistake here. It would be a singular coincidence if both the lower tribunals, intending to draw decrees which should accurately describe the land as the Hays survey delineates it, and to decide all questions which arise as to the correctness of such description, and yet had passed over all mention of such questions, contented themselves with references to the title papers for the particular description, and expended the whole length and strength of their opinions upon the examination of a legal question arising upon the claim of title from grantee to claimant.

The board was bound by law to set out their reasons for their decisions. Can we presume they neglected their duty? Could the judge have omitted all mention of a plat which was before him in advance if he had intended to confirm by that plat? In fine, it seems to us as certain as anything can be, that is matter of deduction, that both board and court intended, and did decide, this much and no more, namely, that the original grant was valid; that the land granted passed by good title from grantee to claimant; that claimant was entitled to a confirmation of such land as had been conceded to grantee, but left the question as to what particular land that was to be adjusted by subsequent proceedings.

We object, too, to the use of this affidavit to elucidate the former order of the district court to show what must have been the intent of the judge, because the information of affiant was too recent. Deponent states (P. R., p. 192, sec. 2) that the reason the said second confirmation in the district court, "made February, 1857," was not presented to the court "at the late hearing, (in May, 1861,) is because it was not known to him or his associate, R. Augustus Thompson, that the claim had been confirmed by this district court, but they supposed that the appeal had been dismissed before this court had decided the case, and deponent upon the argument so stated the fact to be; whereas, in fact, the appeal from the land commissioners to the district court never was discussed by the Attorney General, but that officer agreed that no appeal should be taken to the Supreme Court." (If so, what becomes of intervenor's argument in the record that the decision of the board admitted no explanation at all beyond, we suppose, the affidavit of the commissioner?) Now, if this last view of deponent be correct, it is the decretal order of the district court, and not of the commission, that we are to work by, for the one clearly supersedes the other. It is the intention of the court, and not of the commission, we are to explore; and to that end, if affidavits are admissible, this affidavit was very properly made. The order of the district court, it is now certain, is the final decree in the case.

But we cannot think that fact helps the cause of intervenors, because their most clamorous argument has been that they bought into the suit in good faith in 1857; but now the affidavit informs us "that it was not known to deponent or to his counsel, R. Augustus Thompson, that said claim had been confirmed by the district court." That is, the final confirmation made in 1857 was not known to them in May, 1861. But, stranger still by far, it is further proved by this affidavit that intervenors, "who purchased lands upon that portion of said tract excluded by the late order of this court, purchased the same on the *faith of said final decree* in good faith, believing that said lands were finally decided by the *United States courts* to be part and portion of said grant." That is to say, that lands were purchased in 1857 upon faith of a decree of which intervenors were ignorant until after May, 1861! And yet, after such decision, *which was published in the newspapers*, they, in good faith, purchased them as above set forth.

Surely there is some confusion here which might have been cleared

up on a cross-examination; and, therefore, we regret that the court below attached the importance it did to papers as to which the United States were debarred the rights they would have possessed had the matters set up been regularly introduced in evidence.

It must be admitted that if these affidavits be held admissible and conclusive of the points (as we understand) intended to be established by them, the matter is at an end—the case is closed against the United States; for we are here executing one or other, or both, of two decrees, final for certain purposes, and giving them practical effect and validity. Now, if it be held that we are regularly proceeding under the decree of the commission, one of the counsel for intervenors is ready with his affidavit that the board meant, by that decree, to locate the lands as was done by a subsequent survey; but if the question be as to the decretal order of the court, then the other counsel becomes the deponent to establish the point that the court intended to confirm the land in the self-same manner. Now, the United States have no such advantage in the conduct of their case. They have had no opportunity to offer counter affidavits; nor, in truth, had they any affidavits to offer responsive to the material assertions of these papers, and have therefore been compelled to rely entirely upon the record, which is either silent as to these matters, or differs, by forcible implication at least, from the statements of claimants. And as the representatives of appellants are not satisfied as to the regularity of this mode of proof, and for the other objections above stated, they move and respectfully hope that the affidavits shall be virtually, if not formally, stricken from the record, where it is further submitted they should never have been found.

So much would not have been said upon the allegations of intervenors in their petition for a rehearing, and in the affidavits of their counsel, had they not assumed grave importance in the case, from their unproved statements having been fully accepted by the court below as conclusive evidence, and been made the ground of its approval of the Hays survey. For it will be seen, from the opinion of the district judge, that he by no means considered the Hays survey as representing the proper location of the land, yet consented to confirm it on the ground of some "singular hardship," as well as certain proceedings on the part of the United States agents, which he seemed to consider as operating as an estoppel against the United States from examining the correctness of the Hays survey. And yet, when we seek for these hardships, we find they are only such as

arise from the purchase of an infirm title by intervenors with their eyes open, with a full knowledge of the facts, without any suggestion on the part of the United States, and without waiting for the termination of a suit then in process of litigation. And the matters charged as estopping the government we will respectfully attempt to show have no existence in fact, and that the court was misled by accepting statements for evidence.

Judge Hoffman, in his opinion, treats these topics thus: "There can be no doubt that if this survey be disturbed the case would be one of singular hardship." And the first ground of hardship he mentions thus: "It appears that when the cause was pending before this court on appeal from the board of land commissioners, it was strenuously objected on the part of the United States, and of some parties who have since intervened in this proceeding, that the decree of the board was erroneous, inasmuch as it required the survey to be made substantially as in the Hays survey, and was to include 'Negro Bar' and the town of Folsom."

It will be observed his honor does not say that the intervenors, at the time named, "strenuously objected" to the Hays survey, but only that "it appears" such was the fact. How does it appear? Solely by the affidavit of Mr. Catlin, upon which we have already made our comments. But, even aided by that affidavit, the court can go no further than to say "whether the particular description of the land contained in the decree of the board was, or was not, in conformity with the calls of the grant and diseño, does not appear to have been discussed or intended to be decided in the opinion referred to." Then intervenors were not deceived by the decretal order of the district court, and any "singular hardship" connected with it is of their own construction.

The opinion then recites the subsequent proceedings down to the making of the Hays survey, and proceeds:

"The correctness of this survey appears to have been acquiesced in by the United States from May, 1857, until September, 1858, when an opinion adverse to it was delivered by the Secretary of the Interior, in whom the right of final decision in such matters was then supposed to reside."

It is respectfully submitted that this form of statement scarcely does full justice to the United States. The facts plainly are, that after the survey was made it was as usual forwarded to the General Land Office; at what time it reached there we do not know, but it re-

mained in the department until it had been examined and rejected, which examination and rejection were communicated in due course to the office in San Francisco. Surely it is scarcely accurate to impute to the United States acquiescence in any proceeding of one of its officers, whilst it is under examination by a superior and legally constituted tribunal, which examination results in its rejection. And as the already cited case of Castro *vs.* Hendricks decided that the Interior Department possessed by law just such functions as it exercised in this case, it is not a bare supposition, but a fixed fact, such power existed. That the survey was retained undecided in the office for over a year, doubtless proceeded from the same cause that detained the case in the court undecided for nearly the same time, viz., the pressure of a greater mass of business than it was possible to dispose of in less time.

"In the mean time," continues the opinion, "lands outside of the survey, and which it is now sought to include within the grant, had been advertised and sold as public lands."

Respectfully controverted, the court has been misled. Something of that sort is as broadly charged somewhere in the argument or statements of counsel, but there is no evidence of it whatever. Intervenors have shown that the United States sold lands in that neighborhood, but they were all unquestionably the public property of the United States, and are outside entirely of both the Hays and Mandeville surveys. In the form of a printed brief, this matter cannot be so well discussed. We hope by the hearing to have a plan prepared which will explain the whole of this matter by inspection.

In the next reasons assigned for confirming the survey the court speaks of things done by certain parties on the faith of the finality of the decree below.

We respectfully submit that here is made manifest an error which runs through so much of the arguments of claimants. It is a confusion in the use of the term "finality of the decree." We have contended and shown that the decree was final as to title, and not on that point to be disturbed; but was not and could not have been intended to be final as to particular location. But the decrees are here and elsewhere spoken of without regard to this distinction, and as if they had been treated by the United States as final for all purposes.

We have in another place discussed the questions arising from the facts so strongly relied on by the district judge, and have only to re-

peat our incredulity as to the rights of the United States being concluded by proceedings in the probate and other courts to which the government was not a party. Still less can we imagine how, in land traffic and bargainings to which the United States were strangers, the unadvised sale by one, and this improvident purchase by another party can bind the government to make a title to either one or the other.

As to the argument of the court in making the contrast between the Hays survey and the one ordered by itself we have nothing to say. We believe them both radically wrong, and have already urged the reasons in support of the Mandeville location. Our only object here is to point out what we believe to be the errors in fact, which induced the court to confirm a survey it did not entirely approve. We therefore, in the ten grounds made and numbered in the opinion, desire to notice one matter stated as a fact, viz., that upon the 6,000 acres of land above Alder creek, there have been paid in five years no less than $30,000 in taxes. There is no evidence on this point, and therefore we hope we are not indecorous in saying that, as we are informed, the overestimate is so large as to be almost ludicrous.

In the summing up by the court of the matters by which the United States are held to have bound themselves, (p. 199,) we respectfully hold there is error or inaccuracy in the following: "The survey as made by Mr. Hays is admitted to be substantially in conformity with the decree of the board." Admitted by whom? by claimants perhaps; by the Unted States, we think not. "That decree has been admitted by the United States to be correct." As to title? yes; but not as to location, &c. "It has been accepted as finally determining the location and boundary of the land" by intervenors perhaps; by the United States never for a moment.

"Large sums have been paid, &c., &c., by other parties, who only bought after exhausting all legal means to procure a correction of its alleged errors."

The only evidence in the record is to purchasers who had not exhausted all legal means of correcting alleged error, but who bought into the claim while the very question was under the advisement of the law-constituted tribunal, viz., the Interior Department. Had intervenors suspended their purchase a short while, they would have learned that that authority took the same view they represent themselves as having taken before the district court.

"The representatives of the grantee have received large sums

for lands which the proposed change in location would exclude, while the government of the United States have advertised and sold as public land, lands which the same change would include in the grant."

The United States have no connexion with, or concern about, the sums of money which the representatives of the grantee have received for land sales; but they certainly have not, themselves, advertised and sold as public land, land now sought to be included in the grant.

"It (the decree) has been treated by the supreme court of California in several suits as finally determining the boundaries and location of the tract."

But one case has been cited as bearing on this point, and we think we have shown that the supreme court of California did not, and did not intend to, decide where and what were the "boundaries and location" of this tract. As we were informed a short time since, the case cited was still pending, and would, most probably, remain so until this court should decide those questions. We examined this point at some length, because we were unwilling to have it supposed the supreme court of California could have assumed such positions as it was alleged they had, and therefore quoted the case of Johnston *vs.* Van Dyke to show in full what views they really did entertain.

We respectfully submit that we have shown that the judge below was mistaken in his apprehension of all the alleged facts which induced him to confirm a location, notwithstanding his conviction that if the question were new, it is not such as he would have directed to be made, and the mistakes into which the court has been led shows the propriety of excluding from judicial consideration all statements which have not been duly placed in the record, subject to all the safeguards which the wisdom of the law requires to be placed around them before they can be considered as evidence.

He further insists that appellants were entitled below to the opinion of the judge upon the law of the case. Questions of expediency or hardship could not properly enter into his decision. We hope we have shown that there was no action on the part of government agents which could either mislead intervenors or estop in the prosecution of its rights. But, if every one of the statements erroneously made in the opinion were correct, we contend that the court had no right to take them into consideration.

The duty of the special tribunal to which this class of cases was confided is limited to declaring what lands in California passed into private ownership prior to our acquisition of its territory. It can only inquire and declare what land did or did not pass to the United States as public property by virtue of the conquest and treaty. As to the subsequent management of that property it has no jurisdiction. It is not the almoner of the bounty of the United States, nor has it a general power of superintendence for softening hardships or compensating improvidence or mistake in persons who deal with the public lands as if they were private property. Our form of government has vested such powers in another part of its organization, and with that it must remain. When, therefore, the judge below was mentally and judicially satisfied that the board did not by its decree intend the location which the Hays survey delineated, we submit he should, at all events, have declined to confirm it. His declared opinion was, "notwithstanding all that has been urged to the contrary, it is plain that when the board directed the southern boundary to be run easterly by lines parallel with the general direction of the river, and thence northerly to the river, they supposed the course of the river to be nearly 'easterly,' and that the last line would be at, or nearly at, right angles to it; nor could they have anticipated that a due north line would include within the tract the long tongue of land referred to, and increase so largely the frontage on the river."

When he reached this conclusion he agreed entirely with the position of the United States, that the decree of the board never could have meant to include within the survey "the long tongue of land referred to," nor to increase so largely the river frontage. Then the United States were entitled to such a decision as would not have taken from them those two mentioned things; and yet his decree confirms to the intervenors "the long tongue of land" (the land above and beyond the mouth of Alder creek) and the increased river front, which the board could not have anticipated would be covered by their decree.

The effect of the last decision has been to take some 6,000 acres from the south of the tract and add it to the northeast. It curtails it in the class of land petitioned for grazing land, and compensates by giving land rich in the precious metals and valuable from its water privileges and extended river front. It returns to the mass of the public domain agricultural and pasture lands which our laws readily allow to be reduced to private property, and confirms to individuals

mineral lands from the dominion of which the United States have heretofore refused to part, reserving them in unbroken bulk for such purposes as future policy or need may require.

Were matters of hardship to be admitted, the court might well be appealed to in behalf of those who occupy these lands on the faith of their being public, for purposes to which the permissive policy of the country has invited them. Ejected families, desolate homesteads, abandoned improvements, widespread ruin, might in such a case well claim consideration. But we allude to them only to assure the court that hardships if assumed as on one party, is not confined to that side.

Respectfully submitted.

EDWARD BATES,
Attorney General.
P. DELLA TORRE,
Of Counsel for United States.

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1 Mem 215 Levie
2 Bibb 143
5 Exam
2 Sum Law p 112
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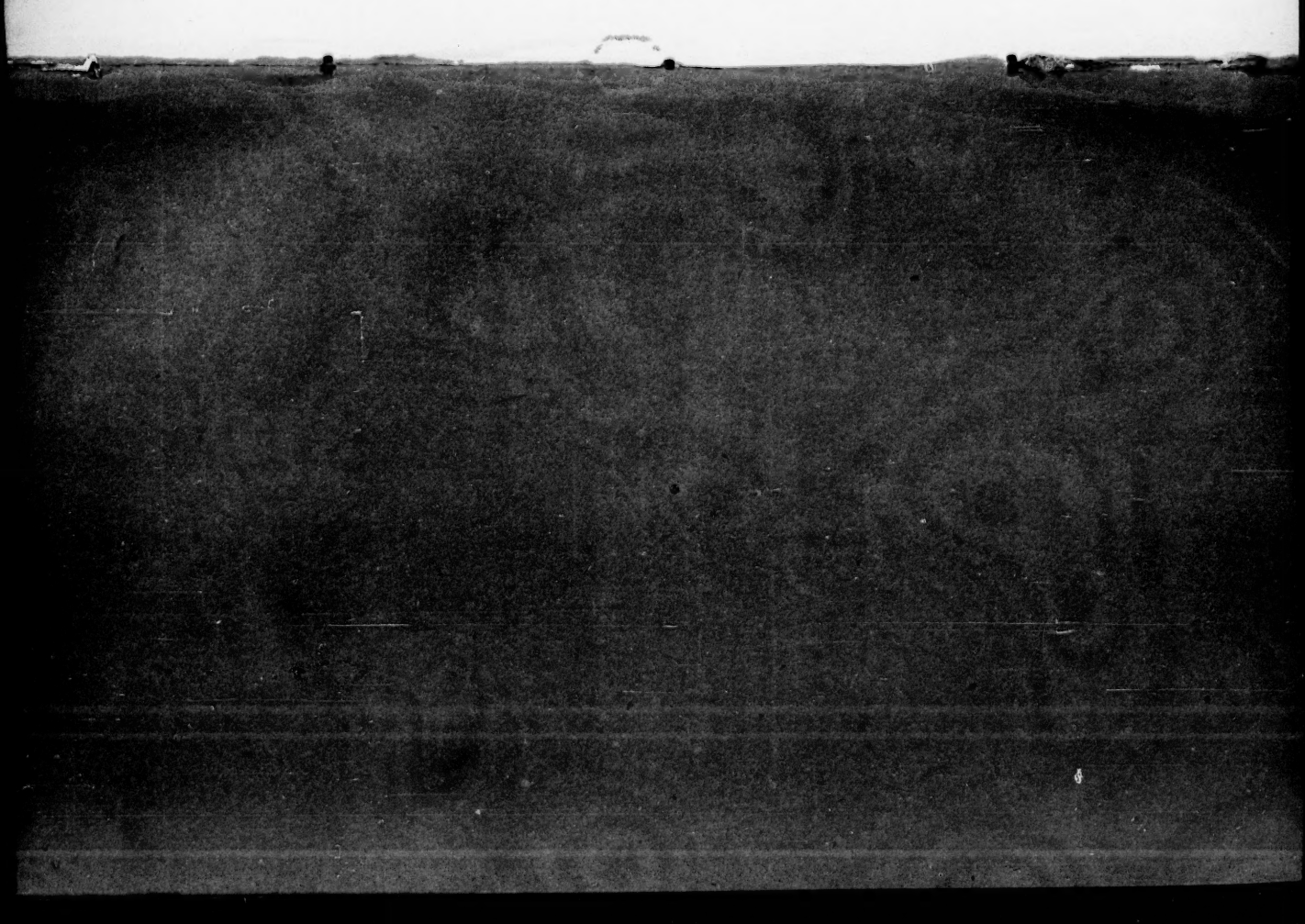
In the Supreme Court of the United States.

UNITED STATES vs. EXECUTORS OF FOLSOM.

APPENDIX TO BRIEF FOR UNITED STATES.

GOVERNMENT PRINTING OFFICE.



In the Supreme Court of the United States.

UNITED STATES vs. EXECUTORS OF FOLSOM.

APPENDIX TO BRIEF FOR UNITED STATES.

APPENDIX No. 1.

GENERAL LAND OFFICE,
September 17, 1858.

SIR: The case of the "Rio de los Americanos" survey, under the eight league confirmation to Folsom, has been under examination and review by the Secretary of the Interior, who has rendered a decision, (copy herewith,) holding, in effect, that the decree of confirmation, resting upon the diseño and grant, must be satisfied in the survey by adhering, first, to Sutter's line on the west, the American river on the north, and the foot-hills near the junction, on the east, of a creek distinctly laid down on the diseño; that the said creek is held to be identical with Alder creek, on the map of the Rancho de los Americanos, as surveyed by Jones—the foot-hills running near the junction of said creek and in a southeasterly direction. That these are the natural features which must control the longitudinal extension of the grant, but as quantity was petitioned for, granted and confirmed, the said quantity may be taken by increasing the depth of the survey so as to comprise the eight square leagues, thereby giving the location a compact form.

Very respectfully,

JOSEPH S. WILSON,
Acting Commissioner.

J. W. MANDEVILLE, Esq.,
Surveyor General, San Francisco, California.

DEPARTMENT OF THE INTERIOR,
September 2, 1858.

SIR: I have carefully considered the matter of the survey of the Rio de los Americanos rancho, No. 321 of the docket of the California land commissioners, a plat of which, submitted with your report of the 8th May last, was approved by Surveyor General Hays on the 29th May, 1857.

The decree of the United States district court, at the term held April 30, 1857, at San Francisco, gave the claimants, "J. L. Folsom and others," leave to proceed under the decree of the land commission as under final decree.

The land commission had decreed as follows: "The land of which confirmation is hereby made is situated in the county of Sacramento, and is known by the name of Rio de los Americanos, being the same which was granted to William A. Leidsdorff, by Governor Micheltorena, on the 8th day of October, 1844, and is bounded as follows:

"Beginning at an oak tree on the bank of the American river, marked as a boundary to the lands granted to John A. Sutter, and running thence south with the line of said Sutter two leagues; thence easterly by lines parallel with the general direction of the said American river, and at the distance, as near as may be, of two leagues therefrom, four leagues, or so far as may be necessary to include in the tract the quantity of eight square leagues; thence northerly, by a line parallel to the one first described, to the American river; thence along the southern bank of said river and binding thereon to the point of beginning. For a more particular description reference to be had to the original grant and to the petition and map contained in the expediente."

By this decree, the grant of October 8, 1844, and the petition and map contained in the expediente, are referred to as descriptive of the same land which by said decree is confirmed.

In the petition, Leidsdorff, the grantee from the Mexican authorities, says, "that being owner of a great number of large cattle, and desirous of owning in fee a place for taking care of them, he has found one vacant, bounded by the lands of Señor Sutter, as shown by the annexed map, which he duly transmits. Said place is on the bank of the American river, and consists of four leagues in length towards the east, and two in breadth towards the south."

The grant of October 8, 1844, is "for eight square leagues on the bank of the river called that of Los Americanos, bounded by the land granted to the colony of Mr. Sutter, and by the range of hills (lomerias) on the east.

On referring to the testimony which was before the board when the decree was made, it is evident that the language of their decree as to courses and distances (not named in the petition and grant) was derived from the statements of the intelligent and well-informed witnesses who testified before them, which were supported by the diseño also before them.

When they say, "beginning at an oak tree on the bank of the American river, &c., and running thence south with the line of said Sutter two leagues; thence *easterly* by lines parallel with the general direction of said American river, and at the distance of two leagues therefrom, four leagues, or as far as may be necessary, to include in the tract the quantity of eight square leagues; thence *northerly* by a line parallel to the one first described, to the American river, and thence along the *southern* bank of that river and winding thereon to the point of beginning;" they describe a four-sided figure, containing eight square leagues, and approaching a parallelogram in shape; and they had the best evidence then to believe that the courses on that figure were very nearly south, east, north, and west. The plat of survey now before me indicates that to preserve this figure (which accords with the petition, the grant, the diseño, and the decree, each and all,) as the "general direction" of the American river at that locality varies considerably from east to west, the southern boundary line or lines of the confirmed land may vary in a corresponding manner. But I am clear that the four-sided figure, with a length of lines approximating two leagues on the north and south lines, and four leagues on the general course of the river, and of the closing line or lines, should be preserved or approximated.

The terms of the petition and of the grant, and the lines of the diseño which was before the commission, all showed no land in the claim lying beyond the creek. The general course of the Americanos river, along the north side of the claim, the board believed to be east and west. Above Alder creek, the present survey shows a particular course in the river to be from north to south.

The land commissioners direct the surveyor to commence at an oak tree on the bank of the American river, thence to go south two leagues, thence easterly four leagues, or far enough to include eight

square leagues, thence northerly to the river, and thence along the "southern bank" of the river to the place of beginning. The surveyor has reversed this process. He begins at the initial point and runs up the river far beyond the point where any southern bank is found, and a distance considerably exceeding four leagues, and thence he proceeds south, and closes for quantity by lines generally much nearer to the river than two leagues; and the distance of two leagues from said river, by the nearest course, is attained on said lines in but a single place, and that for a short distance. The result of this is a change in the figure of the tract, a river front much greater than was in view of the officer making the grant, or of the court confirming it, and the inclusion of a rich mining region, two towns and a granite quarry, within a grant which was asked for as a place for taking care of "a great number of large cattle."

In view of the petition, the grant, the diseño, the possession given by the Mexican officer, the topography of the country, and the courses and distances mentioned in the decree, I must condemn this survey as erroneous. It does not conform to any one of these muniments of the title, but does violence to each and all.

My opinion is, that the confirmed claim cannot properly be so surveyed as to include in the survey any land above or beyond the Alder creek, as indicated on the present plat and on the diseño which was before the land commission.

A new survey should therefore be made, and you will be pleased so to inform the surveyor general, and at the same time communicate this my decision upon the plat of the 29th May, 1857.

In the examination of the papers, I have observed that the decree of the district court in the case was made on the 30th April, 1857, at San Francisco, and that the instructions, work in the field and in the office copies, certificates, &c., &c., were all completed in the brief space of 29 days.

As the survey was made a considerable distance from San Francisco, these circumstances indicate great rapidity in the matter, and perhaps a want of due consideration in the making and approval of the survey, as resulting therefrom.

The plat and papers submitted by you are now returned.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

The COMMISSIONER
of the General Land Office.

It is also submitted, that had an opportunity been given the United States they would have put in evidence matters to traverse or explain the statements which are relied on in the opinion of the district judge to confirm the survey which the court did not consider correct.

They would have introduced evidence going to show that the parties intervenors, as owners of property in the town of Folsom, have but a very small, if any, interest in the extension of the survey over the town of Folsom and the adjacent country, as the purchasers from Folsom's estate hold as well a claim which Folsom had obtained under the laws of California respecting possessory locations upon public lands, as his claim under any survey of the ranch. Being in possession of town lots, there is no probable danger of their being disturbed by any action of the United States contrary to its well settled policy in such cases.

They would further have shown, that among the holders of the possessory claims was Mr. Samuel C. Bruce, the agent and attorney of Captain Folsom, for the full management of the rancho Rio de los Americanos, and that Captain Folsom purchased all the interest of Mr. Bruce, his agent, in that part of his claim at and near the town of Folsom which it is now claimed was covered by his grant.

These possessory claims were taken up to the extent of 160 acres each, by H. B. Meredith, J. S. Meredith, and Ferris Foreman, in September, 1854; they were located at and near Negro bar, at which is situated the present town of Folsom, formerly known as Granite City.

These original claimants sold out soon after to C. L. Wilson, T. D. Judah, (engineer of the Sacramento railroad,) and Samuel C. Bruce, (agent of J. L. Folsom,) who in turn, on the 2d of May, 1855, sold to Captain Folsom, from whose executors sundry of the intervenors derive title. (P. R., p. 147 to 149.)

The papers are found recorded in the county of Sacramento, and certified copies have been procured from there.

The executors of Folsom appear by deed of 30th December, 1857, to have sold on the 21st September, 1857, sundry lands to one Charles W. Mystrom, who, on the 13th November, 1857, sold to the Natoma company.

APPENDIX No. 3.

Had the opportunity been afforded, the United States would have sought to undeceive the court as to another error into which it fell. One among the reasons assigned by Judge Hoffman for confirming the survey which he considered incorrect was, that by correcting its errors certain lands would be taken from parties who had purchased, since the decree of the board, lands for which they have paid a very large sum, which are worth *several hundred thousand dollars*, and on which not less than *thirty thousand dollars have been paid for taxes within the last five years*. (P. R., p. 198, sec. 8.)

It will be observed there is not a word of this to be found in the record. It means, of course, the land claimed by the Natoma company, as intervenors. As no clue to a part of this misinformation could be found in the record, whether by way of evidence, affidavit, suggestion, or argument, application was made to the office of the auditor of the city and county of Sacramento, with this result.

The taxed land of the Natoma company, for the year 1861, was assessed at *ten thousand dollars*, and the taxes paid upon it were *one hundred and seventy-five dollars*.

It must be added, that the company paid much more taxes, some $875, which were assessed upon their improvements. But this cannot enter into consideration, because this assessment is made upon all improvements, whether upon public or private lands.

These improvements consist of water ditches, canals, flumes, and other things appurtenant to the enjoyment of the mining privileges which the government permits to its citizens generally. The whole mountain region of California, all public land, is wonderfully enriched with such improvements, evidences of the skill and energy of its inhabitants. The disputed tract has many upon it.

A moment's consideration will show, that the result of the decision below would be the very opposite to the intent of the court. The Natoma company commenced to pay taxes upon its improvements in 1853, as improvements upon public lands of which they have the permissory usufruct; also numbers of others have also and still do pay taxes upon like improvements, which they, in like good faith with the Natoma company, believed to be upon public land. If these turn out to be public lands as they all at one time thought, and as the great majority still think, then harm is done to no one, for all stand upon an equality in the enjoyment of privileges which the

general government has bounteously chosen to accord to all who choose to employ their capital and industry upon its property during its pleasure, whilst all must stand ready to obey such rules as the policy or necessity of its sovereign owner may in the future induce it to adopt. And these permissory rights, so indispensable not only to the growth and very existence of California itself, but to the prosperity of the country and commerce at large, are sedulously cared for and guarded by the laws of the State, which owes so much to their existence.

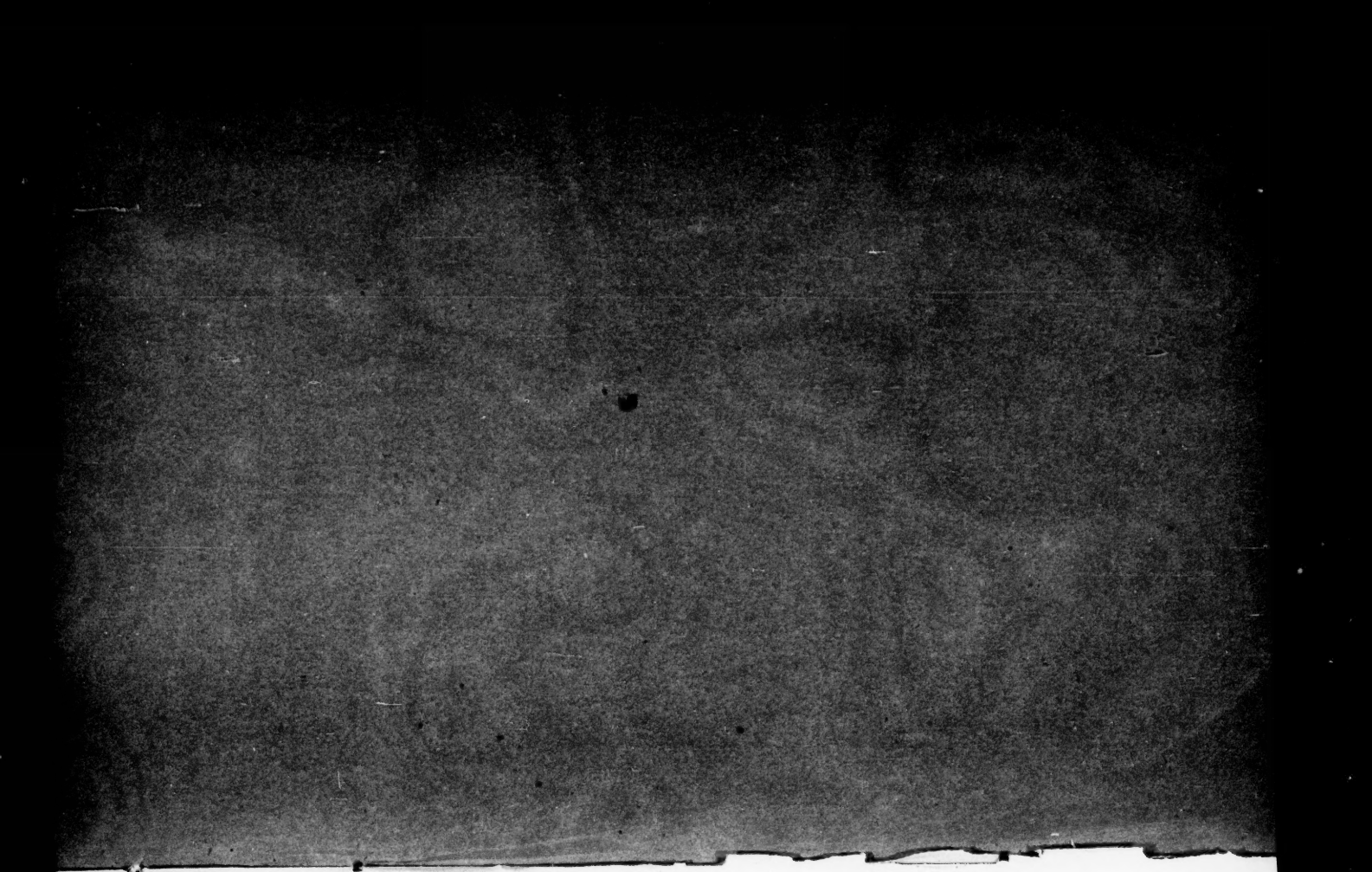
But if this tract is held to be private, the decision vests in one company rights, improvements, easements, privileges, homesteads, and other kinds of property now held and enjoyed by scores, and we believe hundreds of individuals, besides withdrawing just so much land from the possible needs of the government. The injury done to other parties is not to be measured simply by the value of the improvements as they appear upon the tract, for it would be vastly more. The canals, flumes, and other water works, some extending back many miles to the higher mountains, need a right of transit for their waters to the American river. Deprived of this they are valueless. This right of way, enjoyed now in common with the Natoma company, would vest in them as a monopoly, if this land be held to be theirs. Thus an all-important easement to a large and important section of country would be taken from the public and given to one company. It seems to us that the court below could scarcely have held this so desirable result, as to cause it to confirm therefor an unsatisfactory survey. We have desired, therefore, to show that it would be disappointed of the beneficial result it expected if its decision be sustained.

We trust the court will not understand us as advancing these matters by way of argument, to sustain our views of the proper location in this case. The United States have limited their inquiries to one simply: where are the lines of demarcation between public and private property? It has under the law made a purely juridical inquiry, for a purely judicial decision. It has mixed with that no other matters of a different character, content to let the rights of all flow wheresoever the decision of that question may direct them.

But as the last decision below rests entirely upon what seems to them extraneous matters, the counsel, apprehensive lest they should be in error in so considering them, desire to state to the court what

they understand would have been the position of the case had evidence, instead of statements ex parte, been required as the basis of the decree. If this court concur with the lower, as to the relevancy of such matters, it is respectfully submitted, that the United States should not be concluded by final decree, without an opportunity to submit to the proper tests those matters which are copied as in the transcript, but which, it is contended, never were properly in the record.

P. DELLA TORRE,
of counsel for the United States.



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In Justice Catron

Supreme Court of the United States.

DECEMBER TERM, 1863.

THE UNITED STATES, APPELLANT,

vs.

HALLECK ET AL., EXECUTORS OF J. L. FOLSOM, DECEASED, ET AL., APPELLEES.

BRIEF AND ARGUMENT OF A. P. CATLIN, OF COUNSEL

Appellees

McGILL & WITHEROW, PRINTERS, 366 E street, Washington, D. C.

803

Supreme Court of the United States.

DECEMBER TERM, 1863.

THE UNITED STATES, APPELLANT,

vs.

HALLECK ET AL., EXECUTORS OF J. L. FOLSOM, DECEASED, ET AL., APPELLEES.

This is an appeal on the part of the United States from a decree of the United States district court for the northern district of California, made August 2, 1862, approving the location and plat of survey of the tract of land situated in Sacramento county, California, and known as the "Rancho Rio de los Americanos," or "Leidesdorff Ranch."

The proceedings were had under the provisions of the act of Congress passed June 14, 1860, relating to surveys.

The grant was made by Governor Micheltorrena on the 8th day of October, 1844, to William A. Leidesdorff. The claim was presented to the Board of Land Commissioners in September, 1852, by J. L. Folsom, who had acquired the estate by purchase from the heirs of Leidesdorff, the grantee, who died in May, 1848.

The Board of Land Commissioners confirmed the claim to Folsom by its decree of June 12, 1855.

Upon the trial of the case before the board the boundaries of the tract were inquired into, and evidence respecting them was produced both by the claimants and by the Government.

The decree of confirmation by the Board gives specific boundaries to the land by metes and bounds, courses and distances on all sides, in the following words: "Beginning at an oak tree on the bank of the American river marked as a boundary to the lands granted to John A. Sutter, and running thence south with the line of said Sutter two leagues; thence easterly by lines parallel with the general direction of the said American river, and at the distance, as near as may be, of two leagues therefrom, four leagues, or so far as may be necessary, to include in the tract the quantity of eight square leagues; thence northerly, by a line parallel to the one first described, to the American river; thence along the southern bank of said river, and binding thereon, to the point of beginning." (Record, p. 101.)

An appeal was taken by the United States from said decree to the district court in February, 1856.

On the 2d of March, 1857, the Attorney General of the United States, who meanwhile had examined the transcript of the record of the proceedings before the Land Commission, dismissed the further appeal, and in pursuance thereof the Government and the claimants on the 29th of April then next stipulated that "no further appeal be taken on the part of the United States, and that the claimants have leave to proceed under the decree of the United States Land Commissioners heretofore rendered in their favor as under final decree." (Record, p. 105.)

On the following day, April 30, 1857, at a stated term, the district court entered, on motion of the United States district attorney, a decree accordingly in the terms of the said stipulation. (Record, p. 106.)

On the 30th day of May, 1857, Surveyor General John C. Hays approved the plat and field notes of a final survey of the rancho under and in pursuance of the decree, following the lines laid down therein.

The survey thus made is the one which the appellees claim to be correct, and which the district court lately approved.

At sundry times between May 30, 1857, and September, 1858, the claimants sold, for valuable considerations, large

tracts of land on the eastern section of the survey. The Government also sold the public lands adjoining the tract on the south to pre-emptioners who had settled upon such outside lands after said final survey. The purchasers of the lands on the eastern portion of the tract above Alder creek were the parties who had occupied said lands before the decree, and who had resisted the location by appearing and resisting the affirmation of the decree by the district court, but who, when the final appeal was dismissed, as above stated, acquiesced in the decree, and, having no other alternative, secured their possessions by purchase from the executors of Folsom.

These parties, to the number of eighty, purchasers in the aggregate to the amount of some nine thousand acres, together with the executors of Folsom, are parties appellees to this proceeding.

(Vide stipulation, p. 171, and Record, pp. 147, 148.)

On the 31st of May, 1859, on motion of claimants, the district court ordered the surveyor general to return to that court the said survey made as aforesaid by Surveyor General Hays in 1857, which return was accordingly made a few days thereafter. (Record, pp. 107, 108.)

On the 21st of July, 1859, the United States District Attorney filed exceptions thereto, (Record, p. 108,) and subsequently took some depositions for the purpose of showing that the survey was erroneous. (Record, pp. 110 to 122.)

On the 13th of October, 1859, on motion of the United States Attorney, the court vacated its order of May 31, 1859, by which said survey was returned, and dismissed all proceedings under it. The court delivered an opinion discussing at great length the decision of the Supreme Court in the Fossat case, which had then recently been made, and in respect to this particular motion held, that as the parties moving to bring the survey into court, had no objections to it, and as the executive authorities at Washington had ordered a new one to be made, it would hear objections when such new survey should be made. (R. pp. 122, 132.)

On the 22d day of November, claimants obtained an order requiring the surveyor general to return an official survey, and on the 14th of January, 1860, Surveyor General Mande-

ville returned the plat of a survey made and approved by him. (Record, p. 133.)

The claimants and intervenors filed exceptions to the last mentioned survey January 21, 1860. (Record, p. 134.)

The United States District Attorney, Mr. Benham, also filed exceptions to the survey, October 10, 1860. (R. p. 150.)

On the 18th of November, 1861, the court filed an opinion and made an order rejecting the Mandeville survey, and ordering a new one to be made in the form therein described. (Record, pp. 172, 176.)

Accordingly, the surveyor general made a plat of a location in pursuance of said opinion and order. (Rec. p. 177.)

The court, on January 6, 1862, granted leave to move for a rehearing on petition of claimants and intervenors.
(Record, pp. 178 to 193.)

On the 25th of June, 1862, the court delivered its opinion, rejecting the last mentioned survey, and approving the location made by John C. Hays, Surveyor General, in May, 1857, (Record, pp. 193 to 199,) and directing the surveyor general to survey the land in accordance therewith.

On the 2d day of August, 1862, a decree was entered approving said survey, setting forth the lines and containing a certified copy of the plat of the same as part of the decree
(Record, p. 201.)

From this decree this appeal is taken by the United States.

There is no question of the jurisdiction of the district court in this case, because it was pending in that court at the time of the passage of the act of 1860. The survey which the court subsequently rejected had been returned by the surveyor general to the court, and the claimants had filed exceptions to it in January, 1860. It is therefore included within the provisions of the 6th section of the act.

Upon the foregoing statement the appellees present the following points:

I.

The decree of the land commission in this case, by the dismissal of the appeal and the decree of the district court of April 30, 1857, became final and conclusive as to all the questions decided by it.

II.

The parties having litigated before the said commission the question of the boundaries, and the Government having questioned and disputed the validity of the grant upon the ground that its boundaries were too uncertain and indefinite to admit of location, the Board exercised a rightful jurisdiction in giving boundaries to the land, and the executive officers of the Government having accepted such decree and dismissed all appeal therefrom, it is not competent for the Government ever after to question the authority of said decree in any particular.

III.

Under the act of 1860, the district court does not in this case, if it does in any, acquire jurisdiction to open or reform said decree, but is confined to the duty of seeing that the surveyor runs the lines according to the decree.

IV.

The Hays survey is conceded to be in conform
lines laid down in the decree. But the Gover
that the said lines do not correspond with the
umentary title papers. The Government cla
boundary lines laid down in the decree of conf
not correspond with the boundaries named in t
other documentary title papers, and consequen
decree corresponding with such boundary ought to be made.

V.

The only question presented to this Court is one of quan-

tity, arising from the claim of the Government, that the true position of the boundaries named in the original title papers, do not admit of the eight leagues named therein. The exceptions taken by the Government in the court below admit the survey appealed from to be correct, provided the claimants are entitled to eight leagues.

If we are correct in the foregoing views, it will be unnecessary to examine the original title papers and the evidence in the record, in order to defend the decree of the Land Commission against the attacks now made upon it by the parties who represent the Government. These attacks were made before the Land Commission, and were there met and refuted. They were considered by Mr. Cushing, the then Attorney General of the United States, and by him dismissed as being unworthy of serious consideration on the part of the Government, when he ordered the appeal dismissed. If the status of that decree is such that it is yet open to question in respect to one of the essential elements of its perfection, we know of no reason why it is not so open as to all; and if it is not old enough, after the lapse of nine years, to escape reprobation for the supposed imperfections of its original composition, at what period of time may it safely rest from the liability of being summoned to defend itself against the complaints of any party who may choose to revive obsolete and confuted charges against its integrity, and if we are not now called upon to establish anew the authenticity of our title, the quantity of land intended to be granted, and our deraignment from the original source, instead only of our right to a particular piece of land, we are indebted for this immunity to the generosity of the Government officers, and not to any right to such exemption which we may be supposed to have.

We may admit, and it is probably true, that in those cases which come under the operation of the act of 1860, in which the decrees pass only upon the validity of the title without declaring specifically to what particular parcel of land the title attaches, that jurisdiction is given to the district court by that act to make a decree defining the boundary lines of the land. But it is not the intention of that act to authorize the district court to review any question which has been previously decided. The fact that in a majority of the cases which came before the Land Commission, that tribunal did no more than declare that a certain title was good and valid

and was vested in the claimant and that it was situated in a certain locality or neighborhood, led to the necessity of the act, in order that the court might more particularly, and with sufficient certainty define locations theretofore imperfect for the want of well defined and certain descriptions. In this case, in consequence of the plain and specific location by metes and bounds and courses and distances laid down in the original decree of the Land Commission, there was no room for controversy and the court had no other duty to perform than to see that the surveyor ran, upon the ground, the lines laid down on the decree, and to approve a plat of the lines so run.

The appellant does not deny that the survey approved by the district court known as the Hays survey is a correct delineation of the boundary lines as given in the decree, but it is claimed, on the ground that the decree refers to the original title papers, that the whole boundary question is open for adjudication now, precisely as it would be if no boundaries were given. In other words, the appellant proposes to treat this decree, in its description of the boundaries, as though that portion of the decree had been omitted.

If the descriptive portion of the decree can be disposed of, upon such grounds there would be no finality in any branch of the case. If the fact that the decree refers in terms to the documents upon which it is founded, can authorize an inquiry into those papers, in order to ascertain whether in fact the grant was really for the quantity named in the decree, then there is no reason why the inquiry should not be pushed still further and the authority of the Governor and all other vital questions upon which the commission passed, be laid bare for inspection and readjudication. We do not feel justified in protracting observation upon a doctrine so opposed to all reason and authority, and find our excuse for having said so much in the fact that the counsel conducting the case for the Government in the district court contended that the court had authority to reduce the quantity to six leagues. In the exceptions filed by the Government (Record, page 150,) it also alleged that the survey which embraced eight leagues exactly, "included a much larger quantity of land than was granted." (Vide 3d exception.) The exceptions filed by the Government set forth what it claims to be the boundaries, natural objects not mentioned in the decree, and not mentioned in any of the original documents of title nor in the evidence before the commission, and then claim that being so bounded the grant contains considerably less

than eight leagues, and consequently any survey which includes so much as eight leagues must be erroneous.

Again the Government claim that the evidence furnished by the archives proves a grant for only six leagues and this proposition rests upon the fact that there is found in the expediente the usual rough draft of the grant in which the quantity is written six leagues, and also attached to the expediente is a complete grant for six leagues signed by the Governor, remaining in the archives, and appears never to have been delivered to the petitioner. The photographic copies of these papers introduced in evidence in the district court and which come up here with the record show that in the borrador or draft the word "cuartro" was first written, and then erased, and the word "ocho" interlined which was also erased, and the word "seis" written over. In the undelivered grant which remains in the archives "ocho" appears to have been first written, then erased and "seis" interlined. The petition is for a certain tract "four leagues long and two leagues wide." The decree of concession describes eight leagues, and the grant itself which was delivered to the grantee and introduced in evidence by the claimant before the Land Commission describes eight leagues. The genuineness of these papers has never been questioned by the Government. They are free from any interlineations or erasures or other suspicious circumstances.

The counsel for the Government have also produced a copy of folio 11, of the "Tomada Razon," by which it appears that some other and different matter had been recorded on that page, and that said matter was cancelled therefrom by marks of erasure. While the Government introduced this evidence in the district court as we conceive for no other purpose than to attack the authenticity of the grant, the claimants did nothing to meet or explain it, but took the ground that the decree of confirmation was final upon those points, and also considered that even if the question was open, these facts were of no weight against a genuine grant, supported by an expediente, by the registry, by juridical possession, by actual occupation and improvement, and other compliance with the conditions of the grant. The fact that folio 11 of the "Tomada Razon" had some other proceeding recorded upon it which was expunged, merely shows a fact of no more significance than that a mistake was made by the scribe. And the want of correspondence in the matter of the quantity of land granted, between the "borrador" on the one hand and the petition, decree of conces-

sion, and grant, on the other, serves only to show that carelessness occurred in the immaterial papers, but that it did not happen in the grant itself, nor in the petition, nor in the decree of concession. How these erasures and mistakes occurred, it is, perhaps, impossible to explain, and, fortunately, it was not necessary for the claimants to do so. It may have been the Governor's design, in the first instance, to grant Leidesdorff only four or six leagues, notwithstanding he asked for the eight leagues which were, in fact, finally granted.

We have referred to these questions for the purpose of showing that if it were proper to enter into an elaborate consideration of them, the claimants need not fear a reinvestigation of all the questions which were presented to and considered by the Land Commission, and because the appellants claim the right to assail the validity of the grant in this proceeding.

Whatever may be said as to the necessity of determining boundaries in order to determine the validity of claims in most cases under the act of 1851, it was clearly necessary in this case. The grant named Sutter's land on the west and the Lomerias on the east as the boundaries of the tract granted. The Government introduced the expediente in the case of Alvarado's eleven league grant to Sutter for the purpose of showing that Sutter's east line, which, according to the terms of the grant, was Leidesdorff's western boundary, was the margin of the Feather river; and also introduced a witness to prove that the eastern boundary was eighteen miles distant from the point which the claimant alleged to be the western boundary, and attempted to show that the grant was so uncertain as to be incapable of location, and therefore ought to be rejected. The board by its decree settled this branch of the case, and its adjudication in this particular is as binding upon the Government as it is in respect to any other question adjudged therein. Whether that adjudication was correct or not, cannot now be inquired into.

But the counsel for the Government contend that the Court can overcome the difficulties presented by these obviously correct and unquestionable principles by a free exercise of the power of construction. Under the power of construing the meaning of the decree, we are told that the Court must look into the history of the original case as presented to the commission for the purpose of ascertaining, not what the commission intended, but to ascertain what was intended by the

petitioner and the Governor, and to determine what they meant. No one will deny that the Court must construe the decree, but it must be construed upon its face when it is clear and plain, and the matters upon which a decree are founded are not resorted to for the purposes of construction unless in the terms of the decree there is some want of clearness or some difficulty in understanding it. Understanding it is construing it, and if we understand it, there is no need of groping back into the darkness out of which the light of the decree was created. When the decree is understood, then it is construed.

But the construction which the appellant's counsel contend for is the power to construe the meaning of the original parties to the grant, in other words, to exercise the same power which the Land Commission exercised, and to review as upon appeal the judgment of that tribunal, and to make a new decree in so far as it becomes necessary to illustrate the difference of opinion which may exist between the district court under the act of 1860 and the Land Commission under the act of 1851. There is no telling to what extent this mode of construction might be carried. It is needless to say that it is fully equal to the power of making a new decree, and of reversing entirely the judgment of a court, the meaning of which it pretends only to construe. So in this case the appellants argue that the court may hold that the Land Commission intended by south to mean southeast; that by declaring the third line should run parallel to the first line that the board intended it to run obliquely thereto; that in declaring the south boundary lines should be placed, as near as may be, two leagues from the river, that it intended that such lines should run considerably further from the river than two leagues; and that the words of the decree declaring that the southern boundary line should be extended "so far as may be necessary to embrace within the tract eight square leagues," in fact meant only that it should extend far enough to embrace six square leagues.

Now, it is said that the form of the tract produced by the lines of the decree show that the Board by the term "easterly" applied to the general course of the southern boundary, evidently intended that line should run more nearly east than it does in the Hays survey, and that the Board must have supposed that the general course of the river was east, and that in order to carry out the meaning of the board we must change the course of the other lines on the east and west, in order to conform with the

supposed intention of the Board respecting the southern boundary. The assumption that the Board did not understand the course of the river is entirely without foundation, and is contradicted by the terms of the decree itself. The peculiar manner in which the southern boundary lines are constructed show that the Board perfectly well understood that the course of the river was circuitous and irregular, and that its general course was not east. After first directing the starting point to be the oak tree, and the first line to run from thence "south" two leagues, it says, "thence 'easterly,' by lines parallel with the general direction of the said American river, and at the distance, as near as may be, of two leagues therefrom." The course provided by this language is the course of the river by its bends and turns, and so the line is to be divided in parts to accommodate itself to these bends and turns, otherwise the Board, if it had supposed the course of the river to be east or near east, would have said, thence "easterly in a line," instead of "easterly in lines." The term "easterly" is only necessary to indicate the way to turn when at the end of the first line, whether toward the west or toward the east. We understand the word easterly in its usual acceptation to mean to the east generally, in contradistinction to west, north, or south, and is correctly applied to any general direction to the east, as opposed to the west, which would not be better indicated by using the terms northerly or southerly. In this decree the term easterly has qualifying words attached to it, showing that it meant the direction of the American river from the oak tree.

This understanding of the Board is exhibited on the face of the decree, and if we look into the testimony of the case we find abundant evidence to show that the course of the river was well understood by everybody who knew anything of California. Long before the date of the decree all the early American settlers congregated upon its banks, from its source in the sierras to its confluence with the Sacramento. Nearly all of the overland emigrants to California had rested upon it. As early as 1847, Leidesdorff had the land accurately surveyed by a professional surveyor who meandered the courses of the river.

Vide test. of Jno. Halls, p. 141.

Folsom also had it surveyed in 1850. And to put to rest all question as to whether the Board was well informed or not as to the subject-matter upon which it acted, it is shown by the testimony of R. Aug. Thomson, the member of the

Board who drew up the decree. that he had before him at the time a plat of a survey of said rancho upon which the courses of the river were correctly delineated, and upon which plat the courses of the eastern and western boundaries were represented as running southeasterly from the river, and that the Board deliberately changed those lines in order to conform to the grant and to the Mexican ordinances respecting measurements of lands, which required measurements of lands situated upon the banks and shores of rivers, seas, and large lakes to start from such banks and shores in lines running north and south and east and west.

Ordinanzes de Tierras y Aguas, articles 5, 6, and 8 pp. 185–187, translations appended hereto.

The topography of that section of the country with reference to the foot hills was equally well understood. The surveyor general of the State had made during the summer of 1852 a topographical survey of that portion of the country where the grant is located; and in his report to the Legislature of California dated December, 1852, and published in the official journal of the Legislature of 1853, he describes the country from Sacramento City to White Rock springs as being a smooth and level plain for the distance of twenty-five miles, and that at the White Rock spring, which is about three miles further east than the eastern line of the Hays survey, the foot hills of the sierra commence.

The point, therefore, made by counsel for the Government that the Land Commission were not well informed, and misapprehended the meaning of its own words, a point which we have said they have no right to make, is not sustained by reasoning from the face of the decree nor from the facts of the case.

POINTS MADE BY THE APPELLANT.

We propose briefly to examine the objections made to this survey by the appellant in the light furnished by the grant and expediente and the evidence before the Land Commission, waiving for this purpose our position in regard to the finality of the decree.

The whole case, as made on the part of the Government, consists of these two points:

1st. It is claimed, as set forth in its exceptions, that "Alder creek and the neighboring low hills" were intended by the original parties to the grant to be the eastern boundary.

2d. That the survey does not accord in form with the general form of the land as sketched upon the original desino.

In considering the first point, before looking into the papers, we are naturally led to inquire why the Government takes for a boundary to a large rancho two natural objects so dissimilar in character as a creek and a lot of low hills, objects which, from their nature, could not very conveniently be situated in the same place. A creek, perhaps, would make a more certain and definite and therefore a better boundary for a large tract of land than any other natural object. But when you qualify and confuse this certainty by adding to the creek a lot of hills, and especially of "low hills," situated in the neighborhood, the boundary becomes not only unintelligible, but unfit.

The incongruity may perhaps be explained, when we consider that, under the law of 1860, all parties who do not claim under private title must intervene in the name of the United States, and are all represented by the United States Attorney. The Government excepted in this case to the survey which was rejected, as well as the claimants. The United States Attorney, in fact, had no interest to represent but that of sundry settlers upon public lands, and lands claimed to be public. It is easy to perceive that these interests were conflicting, because the moment it was proposed to change the lines of the old Hays' survey, which had been so long recognized by the claimants on the one hand, and in various ways by the Government on the other, the change involved the capture within the rancho of this or that settler on the outside, accordingly as the change might happen to be made. Such of the settlers as had chosen to settle within the lines of Hays' survey, naturally desired such a change as would leave them out, and those settled outside as naturally desired not to be taken in. As the rancho could not be reduced in size in order to meet these difficulties, it was certain that if any change of the old lines were made by excluding quantity from the eastern portion of the tract and transferring it to the southern or southeastern side, somebody occupying public lands along those sides must be sacrificed, and the extent of such sacrifice depended upon how much should be taken from the eastern portion and added elsewhere. So we

may suppose there were found advocates for the creek, and advocates for the low hills, each of which class were accommodated by the exceptions filed by the United States Attorney, who also, perhaps to serve both, or from a laudable desire to appear on the record as claiming something for the benefit of the Government, charged in his third exception that the survey contained more land than was granted. We do not think it improper for the United States Attorney to endeavor to protect the settlers upon the public lands. On the contrary, it is his duty to do so, but in this case his attempt to overthrow the Hays' survey, which was approved early in 1857, and which was confessedly a correct survey of the boundary of a decree made in 1855, and which survey the Government had acquiesced in by advertising for sale, and in some instances selling the lands immediately bordering thereon, was an attempt to sacrifice the interests of a meritorious class of settlers who had respected the claim of Folsom's executors, and had relied upon the various acts of the Government, both judicial and executive, in favor of a class who were mere trespassers upon lands which had been from the earliest settlement of the country the acknowledged and notorious possessions of Captain Folsom and his heirs and assigns.

But we do not wish to digress from our proposal to look into the grant and expediente and evidence before the Land Commission to see if we can find authority for these boundaries set up by the attorney for the Government.

Leidesdorff's petition asks for a piece of land four leagues long to the east and two wide to the south, mentioning no boundary on the east, and naming only Sutter's land and the river as boundaries. Record, p. 30.

The desiño annexed to the petition represents "cerros elevados," "high hills," as the objects thereon furthest to the east. It also represents the creek running down from these "cerros elevados" and emptying into the American river at a considerable distance from the further extremity of the river exhibited in the map. The shaded portion of the desino (Record, page 115,) which is intended to exhibit the land asked for, extends a considerable distance above the mouth of Alder creek and up to the end of the river. The shaded portion extends above the bend for more than a league, according to the scale of the map.

The desino shows that Alder creek extends down into the body of the tract, and if it is made to intersect the river further down, as it should do to be correct, the quantity of land on the desino above Alder creek will bear about the same proportion to that below as it does on the Hays' survey. The de-

sino shows no low hills nor any kind of hills below Alder creek. We look in vain on the desino for any sign of the boundaries set up by the United States.

We next proceed to the decree of concession Record 31,) which was made by the Governor, and which commences, "Having seen the petition with which this expediente commences, the reports which precede with all other things," &c. This document describes the lomerias "ranges of hills" on the east as the boundary in that direction, and makes no mention of any low hills or any creek.

It is not pretended that lomerias means low hills. The term "lomitas," little hills, is frequently found in the Mexican archives.

We next proceed to the grant itself (Record, page 32,) and in this document we find the "lomerias," "ranges of hills" named as the eastern boundary.

We may here inquire why the Governor, with the desino before him, and with the creek prominently marked upon it, did not name the creek as the boundary, instead of the lomerias, if it were, as claimed by the Government, both his intention and the intention of the petitioner to make it the boundary? The creek would have been a better and more convenient boundary, if it had been desired. A natural object of so well defined a character, would have been eagerly seized for the purpose if it had been situated anywhere near the desired point, or if its course had been in the desired direction. As a mere matter of curiosity, we may wonder why the Governor did not use the term "cerros elevados," the term used by the petitioner. Our answer to this is, that the desino was drawn by an American settler, a short time in the country, with some knowledge of Spanish, but not acquainted with official phraseology. Cerros elevados appeared to the Governor to be a clumsy expression, and was one never used in official documents, and he substituted a word which signified the kind of hills intended, without the use of the adjective. The lomerias are, in fact, near the foot of the Sierra Nevada mountains, and the Governor probably thought that cerros elevados sounded too much like the mountains themselves. But the use of the term by the petitioner, signifies pretty clearly that he had no "low hills" in his mind for his eastern boundary.

We will next look into the evidence before the Land Commission, to see if we can find any trace of these low hills or of Alder creek, as a boundary. We find three witnesses who tes-

tify as to the situation of the lomerias, or the "foot hills" or "the hills on the east," as they are frequently termed when speaking of them, both by counsel and witnesses. Two on the part of the claimants and one for the United States. The two for the claimants, Bidwell and Sutter, each state that they were from ten to twelve miles to the east from the western boundary, which places them from three to five miles above the mouth of Alder creek. The Government witness states them at from eighteen to nineteen miles. The new boundary lately set up by the Government, is not even mentioned by counsel or witness before the Land Commission. As the claimant's claim was put at hazard by the proof introduced by the Government, tending to show that his western boundary was the margin of the Feather river, twenty-five miles to the north, and his eastern the lomerias, nineteen miles to the east, it might be supposed that as he had overcome the Feather river boundary by his proof of his line south from the oak tree on the west, that he would have attempted to overcome the lomerias, by proving Alder creek as his eastern boundary, if he had ever intended or treated it as such.

It is proper here to call the attention of the Court to the fact that when we invite attention to the desino, we do not mean the copy found on page 27 of the Record, which is incorrect, but the copy found on page 115. The former is a copy of the copy found in the transcript from the Land Commission. The latter is a copy from the copy introduced in evidence by the claimants in the district court. The original is required by law to be kept in the archives. In the district court the claimants introduced R. C. Hopkins, the keeper of the archives, with the original, who testified, (Record, p. 163,) that the copy in the transcript from the Land Commission was incorrect in many particulars; in showing no shading above Alder creek, in representing the creek as extending further south than in the original, and in several other particulars. He also testified that the traced copy then introduced by claimants and marked "Hopkins, No. 1," was correct A copy of this copy is found on page 115, above referred to. The Land Commission and the district court had the advantage of examining the original. The copies we have here are tracings from tracings and cannot be supposed to represent the original with strict faithfulness. The original copy from which the copy on page 115 was traced comes up here by stipulation and resembles the original desino much more faithfully.

We claim that the Government in setting up new boundaries different from those named in the original documentary title

papers and in the original controversy before the Land Commission ought to maintain its position by strong affirmative proofs. So far from this, it is unable to produce anything whatever in support of its extraordinary assumption, while the claimants may well urge that the original papers and testimony incontestibly show the impossibility of the theory of the Government being correct. To overthrow our boundaries it is necessary to overthrow the grant itself.

The Court will see by examining the testimony a brief summary of which is given hereafter, how signally the Government failed in the district court, in its attempt to show that hills answering the description of lomerias, existed near the mouth of Alder creek. If it had succeeded the fact would still remain that Leidesdorff petitioned for and the Government granted them, that such hills, if they really existed, and were of a character sufficiently large and marked to answer for a natural boundary, were neither the "cerros elevados" named by Leidesdorff nor the lomerias named by Micheltorrena, and that the Government in the contest before the Land Commission had elected to take the hills above Alder creek, which corresponded with the distance named in the grant better than those below the creek. But notwithstanding the strength of this position on their part, the claimants thoroughly exposed the pretence, and combatted and destroyed the error, because it was, though innocuous to them, a palpable error, a sin against light, an outrage upon truth, an effort of the imagination to wipe out a stubborn fact, by attempting to transform the undulations of rolling prarie land into lomerias. It was no more than merely an arbitrary assertion first made by the United States attorney in 1859, in his exceptions filed against the Hays survey. (Record, page 108.) In these exceptions the Government set forth that the grant was bounded by the "ranges of hills on the east, which ranges of hills called for in the grant begin on Alder creek near its confluence with the American river and leaving Alder creek to the north run southwardly beyond the reach of vision towards the Consumnes river, and are well defined and unmistakable in their character."

Afterwards, when the Mandeville survey was made, (Record, page 183,) which conformed to this alleged boundary, the Government, which by that time had obtained the services of another "acting United States district attorney," excepted to the survey because it did so conform. (Vide exceptions, Record, 150,) and in its new exceptions set "Alder creek and the neighboring low hills," without stating whether the neighborhood was above or below the creek or whether the hills were in the neighborhood of the mouth or the head of the creek, and also alleg-

ing against the survey that it extended "too far to the south," which extension was necessarily made in order to conform to the exceptions previously filed. The late decision of the district court having sustained these last mentioned exceptions, the Government is now here relying upon its abandoned and discarded exceptions of 1859. It is thus that the claimants and their vendees, the intervenors, have been sported with for years, at the mercy of every angler for lands who could secure the intervention of the Government, and thus is the just consistency of the Government sacrificed not only in its dealings with the appellees, but with the *bona fide* settlers upon the public lands adjoining the grant.

We understand the appellant to claim that it, in consequence of its peculiar position under the act of 1860, in being the representative of all who claim as settlers upon public lands, is not bound by its exceptions, and is not bound to set forth in its exceptions the boundaries which it claims.

We think it was the intention of the act that each party who chose to become a party should occupy the status of a suitor, and by his exceptions should set forth what he claimed, so that an issue or issues should be formed, or so at least that each party may know what the other claims. There is a right way to locate every rancho. The Government ought to take ground in favor of this right way and adhere to it. If the survey before the Court is correct, the Government ought to support it against the exceptions of all other parties. If it is not correct, it ought to make known by exceptions thereto in what particulars it is incorrect, and to set forth how it should be located, so that the Court may decree upon the subject. The record should show what each party claims, so that it may be known who is injured by the decree, in order to determine what party has a right to appeal. It is undoubtedly the only reasonable construction of the act, that an intervenor who is given the right to come in as a separate party to the proceeding, should be required to state what he wants in a manner as specific as he would be required to do in pleading in a suit in equity. If the Court decides in favor of his claim, he could of course have no appeal; if otherwise, then he could appeal. Does the Government stand on a different footing because it represents the conflicting interests of settlers? No. The law means that the United States should stand in the proceeding as a sole party, contending for a particular, certain, and proper location, which it must make known to the Court without regard to its effect upon particular persons.

This case stands upon the exceptions filed by the Government October 10, 1860, found in the record, page 150. Both the first and second exceptions are sustained by the decision; and any survey, in any, even the smallest degree different from the one sustained by the Court would violate both of said exceptions. The third and only other exception contains two allegations, one of which is also sustained by the decision, namely the one which alleges that the survey contains too much land; because the survey which the Court sustained does not contain too much land, but on the contrary contains exactly eight leagues to the one hundredth part of an acre. The other allegation, to wit, that "Alder creek and the neighboring low hills" should be taken as the eastern boundary is inconsistent with and contradictory of the first two exceptions, because it is in substance and effect an allegation that the survey, in order to obtain the quantity, must extend more than two leagues to the south, which extension violates the first two exceptions; or it is in substance an allegation that the grant is for only about six leagues, which allegation it had no right to plead, and is therefore mere surplusage, and to be treated the same as if was not in the record.

The Government cannot be permitted in this Court on appeal to set up new lines or new general locations which it is not on the record as claiming in the court below. It cannot come here and ask for a survey which would contravene any of the averments which it put upon the record in the district court. It has no right here for any such purpose.

It is not aggrieved by the decision of the district court, except upon the idea that no survey is correct which includes as much as eight leagues. It therefore stands here with the right only to raise that question, and it may well be doubted whether the court below acted properly in granting the appeal. If the court below had refused to allow it, the United States, upon a motion for mandamus or certiorari to the district court, could not have shown from the record that the court below had refused it any relief which it had a right to demand.

Assuming, then, that the survey must embrace the quantity of eight leagues, and that, in fact, the Government have no right to bring the record here to dispute that fact, nothing remains for the Government to claim, because in every other respect the decision of the district court, is in favor of what the Government claimed below. Outside of quantity, there

is no conflict of interest between the appellant and appellee presented by the record.

The Government have therefore no right to dispute the correctness of this survey.

As to the form of the survey as compared with the desino and grant.

If the desino purported to be and actually was a survey, and the Governor had granted the land by the survey, there would be some propriety in instituting a comparison. But to require a survey to comform to a mere rough hand sketch made as this was, without chain or compass or any other measurements, is simply to require an impossible thing to be done. In those respects in which the desino is in error the survey must differ from it. And it will be found, by carefully examining the desino, that the survey differs from it only in such particulars, and does agree with it in its correct features, and conforms to it in all the prominent and controlling topographical characteristics; that it does no violence to the desino, except in its errors, in order to produce an exemplification of its truths, so that we may say that the want of correspondence in the form is the result of a lack of skill in the author of the diseno, instead of that lack in the authors of the decree under which the form of the survey is produced.

We will now point out the inevitable agreements on the one hand and the differences on the other.

The desino ~~It~~ represents the tract as being inclosed by lines running north and south at each end on the east and west.

It represents the tract as extending from the river two leagues to the south by north and south courses.

It represents an extension due east from the western side of four leagues by its scale.

It embraces Alder creek within the tract for a little more than one league.

It shows that the tract extends along the bend of the river above the mouth of Alder creek for a considerable distance.

The desino shows a considerable tract of land embraced within the shaded portions lying above Alder creek and between the creek and the river.

The desino also shows generally the existence of the principal features of the country, such as houses, trees, rivers, creeks, river banks, (orillas,) and high hills, (cerros elevados.)

But the desino incorrectly delineates the course of the river and the course of the creek, and also fails inshowing the sinuosities of the river, though it does show the existence of the two principal bends, but mistakes in showing the proper distances of those bends from the starting point.

It is correct in exhibiting the intersection of the creek with the river at the point where the river bends towards the north, but it makes a great error in calculating the distance from the western boundary to the point of such intersection. The actual distance, as shown by the official survey, from the oak tree to the mouth of Alder creek is eight miles, while the distance as represented on the desino is about ten miles. If we correct this error, as we have a right to do, by means of the scale furnished by the desino itself, to which scale we have a right to suppose the author intended to make his distances conform, by making the creek intersect the river further down, and make the bend in the river commence at such lower point as it should do, there will be exhibited a proportion of land above the creek fully equal to that in the survey.

There are other inaccuracies, such as the length of the river from its intersection with the Sacramento up to the commencement of the land petitioned for, which is much longer than it should be according to the scale. The author was not qualified for map-making. His errors are mainly in the distances and in the courses, and these errors, which were natural enough, produced disproportion and mislocation of objects. But he succeeds in exhibiting upon the map the lands which he desired, and the prominent and most striking natural features and landmarks which distinguished them.

He wanted the land above Alder creek up to the high hills, and therefore he shades the ~~trees~~ land up there, and marks "cerros elevados" as the objects on the extreme verge of the

map at the head of Alder creek. He shades lightly what he deems the choice lands, and darkly the poorer class, which he marks Tierras Estereles y Secos, "barren and dry lands." Goddard's topographical map shows that the lands above Alder creek are the best, and Buzzle and Hall's testify that the best pasturage was above Alder creek. These lands were better watered by the little streams flowing through them down from the lomerios. That Leidesdorf asked for them, not only appears from the desino, but from his own cotemporaneous acts, because soon after obtaining the grant he stocked it with large herds of cattle and sheep, and Buzzle, his tenant, pastured his cattle on these lands, and as early as 1847 he had it regularly surveyed by Halls; pointing out to Halls the lomerias above the creek as the western boundary, and was disappointed because Halls by his survey did not take in more of what he termed his best grazing land above Alder creek.

SUMMARY OF EVIDENCE IN DISTRICT COURT RESPECTING THE SITUATION OF THE LOMERIAS.

GEORGE H. GODDARD. (Record, 136.)

Witness for claimant, is a civil engineer and surveyor, and has made a careful topographical survey of the tract, and of the adjacent country on the north, east, and south, and has produced a very elaborate map and profiles, showing the actual face of the country, its rise and fall in feet above the level of the sea.

The evidence of this witness proves, with mathematical certainty, that the lomerias are above Alder creek, at the point designated on his map, a little to the east of the Hays survey, and his measurements show that there are no lands at or near the mouth of Alder creek, or at any point inside the Hays survey, which rise above the level of the plain. The elevations at Alder creek, which the Government counsel claims as lomerias, are shown to be the table lands, which rise in successive steps from the American river up to the regular level of the country, the course of which table rises is not north and south so as to form an eastern boundary, but is parallel with the river, and traverses the whole tract, from its extreme western

to its eastern limits. It is intersected by ravines and streams, tributaries to the American river, producing a broken or hilly appearance, particularly that portion lying above Alder creek. The rise of this table land from the western boundary to the White Rock range is so gradual, and the elevations between the two points so inconsiderable, as not to intercept the line of vision to the east from any point in the plain, not immediately under the river bluffs, until it strikes the White Rock range. To illustrate this it will only be necessary to stretch a fine thread from any point on the level of the plain, as represented on profiles 1, 2, 3, to the White Rock range, and it will be found the line of vision will pass over every intermediate elevation, and that range will be the first point above the general level on which it will rest. The lomerias marked, on his map, as the White Rock range, the witness declares are the only hills visible from any point on the rancho, to a person looking eastward; that said range is a clearly marked and well defined range of hills, and are the first hills forming the base of the mountains.

He is asked whether, standing on the railroad at a point designated between the Monte Cristo House and the railroad crossing at Alder creek, the vision towards the lomerias is interrupted by any intervening elevations, and he answers, "It is not." His evidence and his maps show that he has examined the whole of the tract, and the adjoining lands, and has given a complete and very minute sketch of the whole.

To the ninth question (Record 137) which was as follows:

What is the general character of the country easterly from the mouth of Alder creek, through which that stream flows, and contiguous thereto, up to the township line laid down as the eastern boundary of the first survey (Hays' survey)?

He answers. "It is a level prairie country, cut down by the gulches and creeks which run into Alder creek."

To the tenth question, "What is the character of the country lying between Alder creek on the south, the American river on the west and north, and the said township line?"

He answers. "It is a continuation of the same prairie land up to the line of the river bluffs, which recede from the river for a distance of about three miles above Alder creek, up the river, at which point they close in and form a canon through which the river passes up to the township line. This country is cut up by creeks and gulches, which flow into the river and its tributaries, the banks of which form bluffs. At the extreme northern point of the tract first described, there is an isolated

hill which rises above the general level of the prairie. The bluffs, as well as the hill spoken of, are shown by the topography of the map. The isolated hill first spoken of is at the southeast corner of section 24, township 10, N. R. 7, E."

To the fourteenth question, "Are there any elevations or ranges of hills rising above the general level of the plain lying west of the township line, dividing ranges 7 and 8 east, and forming the eastern boundary of the first survey—(Hays's survey) ?"

He answers: "There are not, except the banks of the gulches and creeks before described, and the steps of the bluffs before described, and they do not rise above the level of the plain."

Thirtieth question, asked by the United States: "At the place on Exhibit No. 1, marked "Oak Grove house," the height is marked in red, 253. State whether on the ridge running towards Alder creek at 263 there is any place of lower height than that marked 'Oak Grove house,' or does the Placerville road cross the ridge at its lowest point?"

Answer: "The country is a plain or continuous level between those two points, except where it is intersected by the valley of Buffalo creek. The Placerville road does not cross at its lowest point."

Thirty-first question put by the United States: "Then standing at the place on the railroad marked 154, in red, and looking eastwardly the vision is intercepted, is it not, by a range of hills running from Oak Grove house to Alder creek from 100 to 110 feet above the point at 154?"

Answer: "There is no range of hills there at all. The vision cannot be intercepted by what does not exist."

The Court will notice by examining the map (Ex. Goddard, No. 1, W. H. C.) that the distance in a direct line between the two points above referred to is exactly two miles and a half. It is here where the Government claim that the Lomerias are situated, and a rise of 100 feet in 2½ miles is claimed as sufficient to prove the existence of them. The profiles show the plain rises from the west to the east gradually, but rising faster as it nears the foot hills of the mountains. The Court will observe that this whole section of country is bounded by the Sacramento river on the west and Sierra Nevada mountains on the east, and that the American river flows from the mountains to the Sacramento. The face of the country in rising gradually from the Sacramento to the mountains, and gaining in rise as it ap-

proaches the mountains, obeys but the law of nature. The Feather river to the north runs the same way and the Consumnes on the south, showing the formation of the great valley of the Sacramento, of which this rancho forms a part; showing also that the slope of the valley towards the south is very slight. Therefore it is that a comparison of the heights show a constant rise to the east and a general uniformity to the south.

In answer to the last question put to the witness he states that the average rise of the country from the Sutter line for the first five miles to the east is 20 feet to the mile, and for the next four miles 30 feet to the mile, and for the next four miles 40 feet to the mile. The point between Oak Grove house and 154 on the railroad, falls in the range where the general rise is 30 feet in the mile, which gives 75 feet for the natural rise and leaving only 25 feet for the extraordinary hills which are supposed by the Government counsel to constitute the Lomerias. We invite the attention of the Court particularly to the profile map of this witness, (marked Ex. Goddard, No. 2,) upon which profile views are exhibited of three different lines across the tract, one, (No. 1,) running lengthwise across the tract, another, (No. 2,) diagonally across near the mouth of Alder creek, and another, (No. 3,) running across the eastern portion above Alder creek. These profiles show clearly that the whole territory embraced within the survey is a plain from every point of the compass from the westward up to the range of hills known as the White Rock range. The scale of the profile map is the same as the topographical map, and the mile sections correspond, so that the general rise of the land as well as the elevation at any particular place can be ascertained by consulting the two maps together.

JOHN HALLS. (Record, 141.)

Witness for claimants is a civil engineer and surveyor, having been in the employment of the British Government in India, New Zealand and Australia, for many years. He made a regular survey of the ranch in 1847, for Leidesdorff, the field notes of which were destroyed by the great fire in San Francisco. The witness visited the ranch in September, 1859, and particularly examined his eastern line, and recognized it and the general features of the country. He states that his eastern line ran due north, and intersected the river a little above the same line in the Hays survey. He subdivided the rancho into tracts of one league each, as desired by Leidesdorff, who wanted to sell portions of it. He says the lomerias were still further east, and that he could not make his survey reach up to them, al-

though Leidesdorff desired him to do so, if he could. Leidesdorff gave him the grant, a copy of his petition, and a sketch of the land, with instructions to survey it according to the grant, and up to the foot hills, as he, Leidesdorff, thought that four leagues would carry it up to that point, and considered that the best grazing lands were situated in that portion of the tract. Captain Sutter's major domo pointed out to him the oak tree and the lomerias. When he returned to San Francisco, where Leidesdorff resided at the time, and exhibited his survey, Leidesdorff "was much disappointed because it did not extend up to the foot hills." In explanation, Halls says, "I told him that the foot hills were some two or three miles further than the four leagues." This witness describes the land upon the eastern portion of his survey as "undulating."

In answer to the thirty-fourth question, (Record 145,) as to the manner he made the survey, he says:

"Starting from the marked tree, I ran up the river to where the major domo showed me the foot hills. I then calculated the quantities contained in the sinuosities of the river. I then ran out the west line due south from the oak tree, the starting point, two leagues, and found a portion of that line marked on trees; from that line I projected a line due east at right angles four leagues, and then by a line due north, and parallel with the west line, to its intersection with the river, by which means I ascertained the upper boundary of the survey on the river, and then closed the survey by a line drawn from the southern terminus of the western line of the tract, to a point in the parallel line forming the eastern boundary, which would include the quantity of eight square leagues."

This evidence clearly shows that if any lomerias, in the acceptation of that term as it was understood by the cotemporaries of Leidesdorff, existed anywhere inside of Halls' lines, he would have found them while subdividing the tract into one league tracts, and he would have been pretty certain to have responded to Leidesdorff's complaints, by telling him that he had not only gone up to the lomerias, but that he had taken portions of them in the survey.

Willard Buzzle. (Record 151.)

Witness for claimants, occupied the rancho from spring of 1845 to February, 1847, as tenant of Leidesdorff, commenced with five hundred head of cattle, one hundred and fifty sheep, and fifty horses and mares. He was familiar with the country about and above Alder creek, from three to five miles above

where his herds were in the habit of grazing. He describes the lomerias or low hills, as he terms them, as being situated from three to five miles above the creek.

Thirteenth question. "State if you know where the head of Alder creek is, and what is its general direction to its junction with the river?"

Answer. "I could not exactly state its general direction. *It rises in the low hills of which I have spoken.* It is nine or ten years since I was there."

Fourteenth question. "What is the character of the country between the western boundary and the low hills?"

Answer. "There is a river bottom and low lands; as you come up from the bottom the land rises up to a table land; as you go up the river the higher it grows, in some places as high as one hundred feet. This table land extends to the low hills before spoken of."

Fifteenth question. State whether there are any hills or lomerias at or near the mouth of Alder creek, or between that and the point where the creek leaves the low hills.

Answer. "It could hardly be called hills, but it is rolling land."

In answer to the sixteenth question, he says: "The country rises up to the hills on an inclined plane, and the rolling character of the country is caused by gulches and ravines running through the land."

Seventeenth question. "In standing on the table land at a point four or five miles below Alder creek, and looking east, can you see any hills except those that you have described as lying about four miles above Alder creek; that is, between where you stand and those hills?"

Answer. "No sir."

Twentieth question, by United States. "What object marking the boundary did Neal (Sutter's major domo) first show you?"

Answer. "The oak tree I have spoken of; we were on horseback."

Twenty-first question, by United States. "To what point did you next go?"

Answer. "We went out on the table land south from the river about a mile; we then rode up along the table land in an easterly direction, about two miles, and "there," he said, pointing out the low hills, "those are your boundaries;" from that point we started to the river to find a building site."

In the subsequent answers the witness states that the hills pointed out by Neal were well defined and plainly in sight, and that no other hills were visible between those hills and the place where they were standing. That he afterwards became familiar with the hills so pointed out, and always recognized them as the eastern boundary of the ranch, as pointed out by Neal.

JOHN BIDWELL,

A witness before the Land Commission, and also called twice in the district court, once by the Government and once by claimants, says that in 1844, before Leidesdorff petitioned for the land he rode over it with John Sinclair, who examined it for Nathan Spear, who thought of petitioning for it, and, he says, he rode from the western boundary in an easterly direction, towards the lomerias, over a level country, a distance of ten or twelve miles, when he came to a steep gulch; that as he went up the river he receded from the river, and the point where he came to the steep gulch was from one to three miles from the river.

This witness made the Bidwell map, (Record page 114,) at the request of Gov. Micheltorena for his information, and it was placed in the archives where it still remains. The position and form of the land as shown on this map militates with considerable force, the position assumed by the Government. The witness marks upon a traced copy of this map the position occupied by the town of Folsom.

The big gulch which Bidwell came to, being, as he says, from 10 to 12 miles east of the western boundary, and being also, as he says, from one to three miles from the river, if it were Alder creek must have been near its head, and not near its mouth.

JOHN A. SUTTER,

A witness before the Land Commission says, (Record, p. 16,) that as alcalde of the district he gave Leidesdorff juridical possession of the ranch. He says, "Leidesdorff wished to know where his boundaries were, and I rode with him and showed them to him. We did not measure the land at that time. We

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rode from where the old mill race commenced up the American to the house, and then on up the river towards the hills, perhaps ten or twelve miles. Then we went in a directien towards the Consumnes river. *It was an open plain and we could see the land,* and did not ride far in that direction. That was about all we did ; we gave no papers ; it was not then required ; it was considered sufficient to do it in that way."

The witness also says he had the grant and desino with him, that they had no particular form of words in giving possession, that they would ride to the boundaries and notice them, and tell the party what they were, that the Governor was satisfied with his way of doing the business. He says, " we were not very accurate because there were no surveys until afterwards. We judged of distances by the eye."

A. D. PATTERSON,

A witness for the United States before the Land Commission, testified that the foot hills were eighteen or nineteen miles east from his house, which was on the south bank of the American river, ten miles east from Sacramento city. Witness's house is within a few yards of the oak tree.

The Government, as will be seen when we come to examine the testimony introduced by it in the district court, endeavored to prove that the foot hills were only seven miles from the western boundary. It introduced but one witness, (G. W. Colby,) and for the sole purpose of proving that what it proved before the Land Commission was false.

ON THE PART OF THE GOVERNMENT.

G. W. Colby is introduced (Record 158) for the purpose of proving that the foot hills commence on the south side of Alder creek, near its mouth, and run thence south across the ranch. Upon introducing this witness, the Government also introduced a traced copy of the official map of the Hays' survey, the eastern portion of which is covered all over, by some person unknown, with marks purporting to represent hills, ravines, creeks, &c., and with sundry extravagant remarks, such as "high rolling plains, foot hills one hundred and eight feet high, high rolling prairie country," and other similar expressions. The Government don't introduce the author of the map, nor account for him in any way. There are none of the features of the tract in the body or southern or western part shown. The author of the map, whoever he was, must have known what the Govern-

ment attorneys wanted, because he scrupulously avoided sketching any of the elevations or depressions below the line of imaginary foot hills running south from the mouth of Alder creek. The map is not authenticated in any way. The only part of the map made by Colby are the figures in blue ink representing the heighth of a number of elevations which he measured, and as these measurements were not made from a uniform base level, they are worthless, because their relation with each other cannot be ascertained. Some of them are measured from the railroad at Alder creek station, some from the railroad at "Anderson's," some from "Willow creek ravine, near the railroad crossing," some from "Prairie city," without naming what part of Prairie city. His general plan of ascertaining heights is to measure an elevation from the bottom of some neighboring depression. He says, in answer to second question (page 159,) "most of these hills rise quite abruptly, some of them from ninety to one hundred feet in ten chains." The base from which this ninety or one hundred feet is measured, is from the bottom of some neighboring ravine. The highest hill he could find on the whole line of the Placerville road, measured "sixty feet from the bottom of the ravine to the summit," as he tells us in his cross examination in answer to the second question. His base level at Alder creek station is on the railroad, as it passes close to the river on the river bottom, and from this low point he only makes the top of his Alder creek mountains reach one hundred and two feet, which is only nine feet more than Goddard makes it. Goddard gives the elevation of the railroad track at the same point, at one hundred and seventy feet above the sea level, and of the Alder creek hill at two hundred and sixty-three, the difference being nine. Colby nowhere ventures to say that any of the elevations rise above the level of the plain. When asked, "where do the foot hills begin," his answer is equivocal. He says, "I never have discovered anything which would apprise me of the foot hills, until I came to Alder creek, and on a line southwardly from that, after leaving Alder creek, if the foot hills do not commence there, there can be no distinguishable point, until you reach the Sierra Nevada mountains; that is, if you do not find the foot hills there, there is no point east of there which you could designate as foot hills."

This proof shows nothing more than that the term "foot hills," as accepted by Colby, means a different kind of thing from that understood by the persons who were cotemporaries of the original grantee. The people of "Prairie city," a village exhibited in the Colby map, near the eastern line of the Hays' survey, must have been guilty of a misnomer, for accord-

ing to Colby's idea, they live on top of the mountains. A tavern situated on the Placerville road, two miles southeast from Prairie city, and above the eastern line of the Hays' survey, is also known as the Prairie House. When he says he never discovered anything to apprise him of foot hills, until he got to Alder creek, he shows that he had a very limited acquaintance with the land, because everybody else could see the lomerias plainly from any part of the land not obscured by trees, or not immediately under the river bluffs. His answer above quoted, shows that he endeavors merely to suggest the idea, in an argumentative way, that the lomerias are the Sierra Nevada mountains, the summits of which, the examination of any map of California will show, are from eighty to one hundred miles still further to the east.

If we must grant that Colby actually swears that the foot hills are on a line south from the mouth of Alder creek, then the question arises as to whether we shall believe him or believe Patterson. Patterson was the sheriff of Sacramento county, and swears positively. Throwing all the other evidence out of the case, and admitting that the Government, as a suitor, is exempt from the rule which any court would apply in such a case between private parties, we may safely rest upon the point that, as the Government has the affirmative of the question, and as the two witnesses extinguish each other quite as effectually as the famous Kilkenny combatants, the case stands unproved. And in order to shield the Government attorneys from the suspicion of having attempted to impeach their own witness, and to endeavor to reconcile conflicting testimony so as not to charge witnesses with falsehood, which we are always happy to do when it is possible, we are able to suggest an explanation of the apparent inconsistency.

California, it is well known, is a volcanic country, and the lomerias might have been upheaved below Alder creek since Patterson gave his testimony.

One other witness, Isaac Howell, was introduced by the Government, but it is presumed that his testimony is not relied upon. He knew nothing whatever about the matter he was called upon to explain. He was introduced by the Government to prove the survey made by Halls. The claimants afterwards introduced Halls himself, whose testimony is referred to above. The object of the Government attorney in introducing Howell can only be inferred from the questions and answers contained in the deposition, from

which it appears that witness thought Halls was dead, and they endeavored to show that his survey embraced only about four leagues. But the attempt was a failure, as the witness confessed that he knew nothing about it, and that he accompanied Halls only on a part of the first line from the oak tree, and even as to this line the Government attorney got the witness to mark it down in quite a different place and course than it actually was.

We now think we have fairly and fully considered and successfully refuted every point taken by the Government against our survey of which we are advised or could anticipate.

But we cannot forbear presenting to the attention of the Court some general considerations arising out of this case, all of which appear in the record, which should move the Court against disturbing this survey.

The claimants never claimed an acre of land outside of the Hays' survey. The original grantee as early as 1847 claimed the land on the river as high up as that survey, and very nearly in the same form. After the boundaries fixed by the Land Commission in 1855 became binding on the Government by the final decree in 1857, and after Surveyor General Hays had surveyed the lines on the ground and approved the same, the claimants conformed themselves thereto, and sold to the intervenors the whole of the eastern portion of the tract by the lines of said survey. The Government also recognized the lines in an equally solemn manner by the proclamation of the President in February, 1858, offering the bordering lands for sale. The intervenors had in February, 1856, before they purchased, appeared in the district court while the cause was on appeal, and before the appeal was dismissed by the Government, and opposed the confirmation of said decree without success. After the dismissal, and after the survey was approved, the intervenors, who had settled upon the land, were obliged to acquiesce, and became the purchasers of the land. Before the decree had become final the intervenors opposed and the Government adhered to the boundaries. After the decree became final, and the intervenors had yielded, as per force they were compelled to do, after the Government had forsaken them, and they had made their peace with the *owners*, now no longer mere *claimants*, then the power of the Government, moved by irresponsible subordinates, rebelled, and ever since has been used in the work of tearing down the edifice which pro-

tects not only the interests of the claimants but the interests of the Government. The record shows that these interests are identical; they are interlocked and dovetailed together. The eastern line cannot be drawn down without jostling the interests of the Government on the southern line, for which interests, the Government expressly puts itself upon the record as claiming protection. And it is a fact which cannot be successfully denied, because the record shows it to be the fact, that the counsel for the Government, ever since the issue was made up in the court below, have been endeavoring to injure the interests of the Government. Though we may suppose that by taking a certain amount of land from the eastern side and adding the same to the southern side the Government will be neither the gainer nor the looser, and that for that reason the interest is equally balanced, yet the scale is very decidedly turned by the choice of the Government itself in placing upon the record the declaration *that the lands on the southern side are claimed by the pre-emptors, who, relying upon the faith of the Government, have settled upon these lands and improved the same, and in the enjoyment of which they claim, and have a right to claim, the protection of the United States.*

If the Government counsel are not here endeavoring to defeat this choice, then we do not understand what their purpose is, because we cannot admit that they are so ill informed as to the effect of the confirmation of this grant, as to suppose their purpose to be to obtain a reduction of the quantity. And though *we* may have no right to say that the United States shall not betray those whom it undertook to defend in the court below, we yet, as a party to the record, have a right to say that the United States shall not do so for the purpose of injuring us, and to say that it shall not ask for a relief against us in this court, which it did not ask but expressly disclaimed in the district court.

This decree has been treated by the courts of California as a decree which finally adjudicates the location and boundaries of the land, in numerous actions of ejectment and recoveries have been had under it against trespasses upon the lands within the lines above Alder creek, as far back as six years ago. One of these cases was taken to the Supreme Court of the State, and is reported in 14 Cal. Rep., page 550. *Natoma W. and N. Co., vs. Clarkin, et al.* (Extract from the opinion given below.)

The decision of the Supreme Court of California in that

case is a leading case, and is an authority upon which numerous decisions are founded.

The Supreme Court of California have always held that these final decrees, to the extent that they determine the validity of the title or fixed the boundaries, were conclusive. *Mott vs. Smith*, 16 *Cal.* (Extract given below.)

In the case first above quoted, the plaintiff, one of the claimants in this case, holding under Folsom after he, Folsom, had obtained a decree settling the very question in dispute between himself and the United States, introduces that decree in evidence in an action of ejectment, and obtains the decision of the Supreme Court of the State that the decree is conclusive evidence of his title to the land claimed. Now, at this time, the United States is put forward here by the defendants in that case, seeking relief from that decision, by asking the court to change the decree so that the land above Alder creek may be excluded.

In consideration, therefore, of the confirmation of this particular tract of land by the commission in 1855, the form of which, the United States agreed to by its consent decree of April, 1857; of the survey of the same by the Surveyor General, which is in strict accordance therewith; of the recognition of that survey by the United States, as evidenced by its advertisement and sale of bordering lands; of the acknowledged truth that said survey is within the exterior limits of the calls of the original grant, and in conformity to the election of the grantee, as evidenced by his early survey, long occupation, and by the subsequent sales by his successors and their assigns; of the fact that the long repose upon the survey, enjoyed by the claimants and those holding under them, as well as those holding under the United States, has built up large interests, all of which have thrived upon a well reasoned and just faith in the solemn acts of the Government, both judicial and executive; of the recognition of the lines by the highest judicial authority of the State; of the recognition by the United States in this very case, of the rights of those pre-emptors whose possessions would be infringed by the least disturbance of this survey, and of the fact that a reinvestigation of the original case upon its merits, strongly upholds the correctness of the decree and the survey thereunder; we feel assured that this court will sustain the survey decree of the district court.

Respectfully submitted,

A. P. CATLIN,
Of Counsel for Appellees.

TRANSLATION OF ARTICLES 5, 6, AND 8,

From the rules prescribed by the "Ordinanzes de Tierras y Aguas," for the measurement of lands, cited above.

ARTICLE FIVE.

In the "Criaderos and Sitios," the measurements are always to be made from east to west, and from north to south, unless there should be some agreement between the parties to make the measurement in some other way—that an agreement having been made between the parties interested, the measurement may be made in the form agreed upon; it is to be observed also that if, at the time of measuring the lands, the agreement should be that in said Sitios the measurement should not be made from east to west, nor from north to south, it is ordered that this does not include the mode of measuring from the center.

ARTICLE SIX.

In the measurement of lands which are not "Cabalerias," nor such as be suitable for the growth of grain, that is, lands that are designed for the raising and pasturage of stock, the measurements are to be made over rock and rivers, including those which may be valueless, ascending and descending mountains and hills, and crossing ditches and arroyos; wherefore it is ordered that in place abounding in thickets of undergrowth, paths be opened so that the measurements can be made by running the cord in a direct line; it is to be observed, however, that all those rules, given principally for cases in which the measurements are to be made for the first time, of lands to be granted or divided, are limited and divided when they relate to a measurement already made, since in that case everything must be done in accordance with the titles, which serve as a guide.

ARTICLE EIGHT.

If the grant of lands be made on the sea shore, or on the banks of any river or large lake, such shore shall form the boundary on one side of said lands, from whence the measurements shall commence.

Natoma Water and Mining Company *vs.* Clarkin *et al.*, 14 Cal. Rep., pages 548, 550-51, cited above:

EXTRACTS FROM OPINION OF COURT.

"The grant, with the accompanying papers, describes the land as lying on the American River, adjoining land previously granted to the colony of Sutter. The decree of the Commission confines the claim under the grant to a particular tract, describing it with specific boundaries. * * * * * * * *

On what ground the final decree of the Commission, and the order of the district court, were held to be irrelevant testimony we are unable to perceive.

"The right of the plaintiffs to recover is based upon the grant of the Mexican Government. The decree of the commission, rendered final by the withdrawal on the part of the United States of any appeal therefrom, is not only conclusive evidence of the validity of such grant and of its recognition by the United States, but also of the location of the specific quantity granted. Against its effect neither the Governernment nor any parties claiming under the Government could ever assert any rights. So far then from being irrelevant, the decree, with its specific boundaries, and the order of the district court granting leave to the claimants under the stipulation of the officers of the Government, to proceed thereupon as a final decree, were in the highest sense relevant and material. They were, in fact, taken in connection with the grant, conclusive of the right of the plaintiff to recover, provided the premises in controversy were within the designated boundaries.

"A patent of the United States could have no greater effect upon the title. * * * * * * *

So far as the title is concerned, the boundaries of the land being given, its segregation, in other words, from the public domain being made by the decree itself, nothing further could be required,"

Mott *vs.* Smith, 16 Cal. Rep., pp. 551 (bottom,) 551 (top.)

EXTRACT FROM OPINION.

"Assuming, then, as a matter of fact, that the grant was issued by Sutter, without authority, the answer to the objection, taken on that ground, is perfect: it had been decided otherwise by the tribunals established by the United States for the express purpose of ascertaining and determining the validity of grants claimed to have been issued to individuals by authority of the Mexican Government. This particular grant these tribunals have passed upon and pronounced valid, entitling the claimant to a recognition and confirmation of his claim thereunder. The United States has its officers to take care of its interests, and to conduct legal proceedings in its behalf before the tribunals of the country. The highest officer for that purpose in the Union, with supervision over proceedings in each district, is the Attorney General; the highest officer for a particular district, subject to such general supervision, is the district attorney. Both of these officers have consented, on the part of the United States, that the appeal from the judgment of the Land Commission, affirming the validity of the grant to the Guitierres should be dismissed, and upon such consent the United States district court has acted and dismissed the appeal then pending, and ordered that the claimant have leave to proceed upon the decree of the commission as a final decree, and these matters also appear by the recital of the patent. The validity of the grant is, therefore, the law of that case. It can never be questioned again by the Government, or by individuals claiming under the Government, either collaterally in an action of ejectment or directly in any other proceeding. It is a closed question for all time."

McGill & Witherow, Printers and Stereotypers, 366 E street.

Fulsom.

Supreme Court of the United States.

DECEMBER TERM, 1863.

No. 168.

THE UNITED STATES, APPELLANT,

vs.

HALLECK ET AL., EXECUTORS, &C., OF J. L. FOLSOM, DECEASED, APPELLEES.

SUPPLEMENTARY STATEMENT OF POINTS AND BRIEF ON PART OF THE APPELLEES.

A. P. CATLIN,
Of Counsel for Appellees.

McGILL & WITHEROW, PRINTERS, 366 E street, Washington, D. C.

Supreme Court of the United States.

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THE UNITED STATES APPELLANT,

vs.

HALLECK ET AL., EXECUTORS, &c., OF J. L. FOLSOM, DECEASED, APPELLEES.

Supplementary statement of Points and Brief on part of the Appellees.

I.

This case is free from all questions arising out of the intervention of third parties. The issue, if one there be, is solely between the United States on the one hand, and the claimants of the land on the other. No parties whatsoever, except these parties and their privies, can possibly have any interest in the dispute.

II.

The questions to be reviewed, and the only ones which can be reviewed by this Court, are errors alleged against the judgment of the court below; and the review is restricted to such errors as constitute an *aggrievement* of the party

seeking their correction. The appellant cannot raise questions here against the decree, which were not presented in the court below and decided adversely to him.

III.

The act of 3d March, 1851, conferred upon the Land Commission and upon the District Court the power to *judicially* pass upon the validity of land claims derived from Mexico. Validity when applied to land titles imports something more than mere genuineness of papers, more than a mere equity—a valid title under the act of 1851 means a legal title, and the term validity imports all which rules of law require to make a title good and perfect. No rule of law is better established than that certainty of description is a necessary element in a valid title.

IV.

Under the act of 1851, no *judicial* functions were conferred on the surveyor. His intervention, or aid, was not required to enable the court to pass upon the validity of the title. The court might pronounce a title invalid, if from the title papers and the evidence it could not *find* the land.

After the court had adjudged finally and favorably upon the title, then the *claimant* might require the surveyor to *measure* it upon the ground if he desired it. The measuring it, and making a plat is a necessary preliminary to a patent. But a patent is not an essential to make the title valid. Validity is previously established by the court.

V.

"To accurately survey" by the act of 1851, means to *measure and mark* with suitable monuments and with mathematical exactness upon the ground the parcel or tract of land which the court has previously confirmed to the claimant. The term survey must be used in its legal sense. But in no sense does it import any element necessary to the validity of a title.

VI.

The surveyor has no discretionary power to survey the land in a different place or in a different form from that described in the decree of confirmation. If the decree describes boundaries which contain a larger area than the quantity prescribed, the quantity immediately becomes one of the controlling boundary features and overcomes those minor calls which enlarge the quantity. The minor calls must yield to the more important ones and the quantity must adhere to the prominent and controlling boundaries.

The construction of the title papers given by the court, as to the situation of the land cannot be reviewed and overruled by the surveyor, and such construction is binding upon the parties. The aggrieved party must seek his remedy by appeal to a superior court and not to the surveyor.

VII.

There is no such system as one of *external* boundaries to be declared by the court, and another of *internal* boundaries to be found by the surveyor, as claimed by the Government counsel in a late important case before this Court; nor is an exterior or *external* boundary properly put as the converse of a *specific* boundary. Whether a boundary is specific or not or is more or less specific depends upon its character for certainty. While the Government claims that the courts must find what it calls *external* boundaries it clearly advances the idea that those external boundaries must be loose, indefinite, and uncertain, and that it is a fatal error, going to the jurisdiction of the court to find boundaries which are so narrow and contracted and so positive and immovable as to leave the surveyor no room for the play of his discretion. According to the new theory of the Government it is a fatal error in the court to *touch* the land confirmed with boundaries, but it must erect an out-boundary strong enough to keep the rampant surveyor somewhere inside. (Vide Government briefs in Fossatt case.)

VIII.

The act of 1860 is not an enabling act to the act of 1851, but is a separate and distinct procedure by which additional powers and duties are given to the court to be exercised

after the functions of the court under the act of 1851, have been performed.

There must be a final decree under the act of 1851 confirming the claim, and there must be a survey by the surveyor general before the claim becomes subject to the jurisdiction of the act of 1860.

The functions of the Land Commissioner are in no wise disturbed, but a power is placed over him. The surveyor, in making his surveys under the act of 1851, always acts under the instructions of the land office, as much now as he did before the passage of the act of 1860. But the district court under the act of 1860, passes upon the survey when made, and if it finds it correct and so decrees, the law declares such survey to be as effectual as a patent.

IX.

Whatever may have been the nature of the title under the Mexican system prior to the transfer of sovereignty to the United States, whether a mere right of occupation, an equitable title only, a mere right to enjoy a certain quantity of land within large exterior landmarks, subject to be floated about to make room for sobrante concessions, subject to conditions, servitudes, and forfeitures, as soon as it was pronounced a valid title by the courts of this country, it became at once a perfect title as known under our system, and a perfect title attaches itself to land, definite in quantity, and of clearly described situation. Certainty and precision in describing the location and boundaries of land seem to be considered by the Government counsel as unlawful. "In violation of the provisions of the act of March 3, 1851, it (the court) made a *specific* instead of a *general* decree," says the special counsel of the Government in one of his briefs filed in the Fossat case.

In the Sepulveda case decided at this term, the Court uses the following language:

"It is true that for the determination of the validity of the claims presented, some consideration must have been had as to their extent, location, and boundaries. The petitions of the claimants must necessarily have designated with more or less precision such extent and location. And where the grants were by metes and bounds, or where proceedings before Mexican authorities, such as took place upon a juridical delivery of possession, had established the

boundaries, or from any other source pending the proceedings for a confirmation, the boundaries were indicated, it was proper for the board or the district court to declare them in their decrees. And such was the course adopted in numerous instances."

X.

This is one of those cases in which the board did declare the boundaries in its decree. 1. The decree being final, and the subject-matter being within the jurisdiction, it will be *presumed* that the court acted properly in declaring the boundaries, and this Court will not look behind the decree to inquire whether the court below acted properly or not. 2. But if the Court should look behind the decree, it will perceive that the Government before the land commission attempted to defeat the claim, on the ground that the calls of the grant were too uncertain to admit of location, that the juridical delivery of possession was imperfect and ineffectual, and introduced evidence, documentary and parol, to scatter the boundaries to the four quarters of the earth.

The board adjudicated those questions. The Government acquiesced in the correctness of the adjudication, and on its own motion caused the entry of a final decree thereon in the district court. (Record, 106.)

The correctness of that adjudication is not now open to question or review.

The Survey under the Decree.

I.

It never has been denied by anybody that the Hays survey is a correct survey of the boundaries laid down in the decree. Judge Hoffman, in approving it, says: "The survey as made by Mr. Hays is admitted to be substantially in conformity with the decree of the board. By modifying it in some comparatively unimportant particulars, it would be in precise accordance with the decree."

II.

The Government have never sought a reformation of these "unimportant" errors of the survey, if any such there be; and never have pointed them out, nor asked the Court to correct them.

What Relief did the Government seek in the District Court under the Act of 1860?

I.

It asked for but one mode of relief; to wit, that any survey was erroneous which *embraced more than six leagues*, because it alleged that the grant was for only six leagues.

II.

It filed its allegations in writing, setting forth the boundaries which it claimed, which boundaries embraced something less than six leagues, and claimed that a survey ought to be made in accordance therewith.

III.

The exceptions and allegations filed by the Government fully sustained the Hays survey, provided it is proper to include eight leagues, and fully show that the Government would be injured by any disturbance of the Hays survey, except that kind of disturbance which would cut two leagues off. The facts alleged by the Government in the district court, and admitted by the claimants, by a stipulation filed in the case, show positively that no survey embracing eight leagues can by possibility be made, except the Hays survey, without wrongfully injuring the Government.

IV.

The written allegations, as well as all other allegations, which were made or could be made by both parties, and the stipulated admissions of facts, narrowed the controversy in the court below to the question as to whether the Hays sur-

vey was erroneous because it contained eight leagues instead of six.

Vide Exceptions, Record, 150; *and Stipulations, Record*, 170–171.

V.

In order to establish the truth of its allegations the Government introduced a portion of the archives relating to the title, photographic copies of which are in the record; and also some evidence to show its alleged six leagues boundaries.

Its archive evidence is only effectual to prove the utter want of sincerity or intelligence on the part of those who professed to think it sufficient to throw suspicion or discredit on the claimants eight league grant.

The parol evidence in relation to the boundary failed to prove what was intended, but did not fail to show that the special attorney permitted to appear in place of the U. S. attorney attempted to prove that the Government proved a false boundary before the land commission. (*Vide deposition of Colby in District Court*, page 158, *and Patterson's deposition before Supreme Court*, page 21. *Both Government witnesses.*)

VI.

The appellees state as their proposition under this head:

1st. That all the evidence and all the allegations in the record in relation to the six leagues grant are inadmissable and ought to be struck from the record; or ought to be disregarded as irrelevant.

2d. Or if it be not so, then that it is entirely insufficient to establish the point to which it relates.

3d. In either case, there being no other point in issue between the parties, the decree must be affirmed.

As to the survey under the grant irrespective of the boundaries laid down in the decree.

Waiving for the purpose of argument merely, the finality of the decree, and looking into the documents of title and proceedings before the land commission it will be found that in no respect does the survey violate the calls of the grant, but on the contrary it obeys the obvious intentions of the original grantor and grantee.

I.

The petitioner asks for a tract four leagues in length (por el este,) to the east and two leagues in width (por el sur) to the south and describes it as lying on the American river, collindante the lands of Senor Sutter. The desino annexed is a rough sketch and delineates the land solicited by darkly shading a space corresponding by the scale in proportion to the 2 by 4, tract mentioned in the petition, and extending easterly to a point near the head of Alder Creek, marked, "cerros elevados." A careful observation of the desino will clearly show that all the land contained in the Hays' survey is represented upon the shaded portion. (*Vide first brief for full examination of the peculiarities of the desino.*)

II.

The decree of concession describes the tract as lying upon the American river, "bounded by the land granted to the colony of Mr. Sutter, and by the hills (las lomerias) on the east, in extent eight square leagues."

III.

The grant describes the land in the same terms as the concession.

IV.

Before the land commission two witnesses introduced by claimants, *estimated* the lomerias to be situated from ten to twelve miles to the east from the western boundary; and one witness (Patterson) introduced by the Government, swore positively that the lomerias were distant eighteen miles from the western boundary.

(NOTE. The actual distance, as shown by the topographical maps before the district court, is thirteen and one half miles.)

The claimant's witnesses *underestimated* the distance a little, and the Government witness *overstated* it a good deal. It is perfectly clear that neither of them referred to the imaginary range of hills lately discovered by the attorneys who

represent the Government in this case, as commencing at the mouth of Alder creek, and running thence south, and being only seven miles distant from the western boundary.

V.

It therefore clearly appears upon looking into the original title papers and evidence upon which the decree is founded, as upon a regular appeal therefrom, that no error can be discovered. The survey is within the three natural calls, to wit: Sutter's land on the west, the lomerias on the east, and the American river on the north.

VI.

It also appears that the Government, before the land commission, represented by its law agent, and contending for its own interests, established the eastern boundary in one place, and obtained a final adjudication thereon. But now the Attorney General permits the attorneys of private parties, who are strangers to the record, to use the name of the United States in an attempt to prove that boundary in another place, eleven miles distant from the place first alleged, in a vain and unlawful effort to overturn a final decree, protracting an indecent contest, waged from year to year not only against the claimants, but against the interests of the Government.

Recognition of the Hays Survey by the Government.

The Hays survey has always been acknowledged by the Government, both in its judicial and executive branches, from the earliest stage of the litigation *down to the present time*. Strange as this assertion may appear, it is nevertheless true. It is true that the survey is now disputed *in the name* of the Government, but not by the Government.

I.

The Government acquiesced in the survey when it acquiesced in the decree and dismissed all appeal therefrom in May, 1857.

II.

The survey made and approved by the surveyor general was accepted by both parties. The claimants sold during the year 1857 the whole of the eastern portion of the land. (Vide stipulations, record, 171.) They never, either before or after the survey, claimed a foot of land outside of it.

III.

The Land Office department immediately surveyed and sectionized the circumjacent public lands, and put them in market for sale. The whole process of surveying, subdividing, platting, returning from the local office to the general land office, publishing, and advertising for sale, was gone through with, and on the 30th day of June, 1858, the President of the United States, by his proclamation of that date, offered the lands lying along the southern line of the survey for sale. (*Vide Proclamation stated in exceptions of claimants, page* 135, *record. and Government exceptions, page* 150, *also stipulation, record* 170.) Some of the lands were sold by the Government directly, others were accepted by the land office of the district as State locations under the act of Congress donating 500,000 acres of land to the State of California for school purposes. All of them were settled upon by pre-emptioners under the land laws of the United States. (*Vide Goddard's dep., Rec.* 139, *and stipulation, page* 170.)

IV.

The Commissioner of the general land office approved the survey, and the land office maps exhibiting the surveys of public and private lands in California for the years 1857 and 1858, published with the report of the surveyor general, set forth the Hays survey as a *final and approved* survey. (Vide map exhibited in Court.)

Up to September, 1858, the Government had performed every act which it was possible for it to do, through its usual and prescribed mode of action, and had bound itself as strongly as it could towards the acceptance of the survey, by every act in its power, except the issuance of a patent.

V.

In September, 1858, after the occurrence of all the foregoing proceedings, the Secretary of the Interior refused to issue a patent, and disapproved the survey, and ordered a new one to be made.

This was simply an eccentric and arbitrary act, and was treated as such by the United States district attorney in the proceedings in the district court under the act of 1860, as will be seen by referring to the exception against the survey ordered by the Secretary, filed on the part of the United States. (*Rec.* 150.)

The whole matter had previously passed through the land office department, and received its sanction from the President down to the surveyor.

VI.

The survey made under the instructions of the Secretary became subject to the supervision of the district court, under the 6th section of the act of 1860, as proceedings were pending upon the survey in that court at the date of the passage of the act; and this gave the Government a chance to condemn it, and another opportunity to uphold the Hays survey, which it failed not to improve when the time for filing its allegations and exceptions arrived.

Rights of Squatters under act of 1860.

The 3d section of the act provides "that all parties claiming interest under pre-emption settlement, or other right or title derived from the United States, shall not be permitted to intervene separately, but the rights and interests of said parties shall be represented by the district attorney for the United States intervening in the name of the United States, aided by counsel acting for said parties jointly, if they think proper to employ such counsel."

I.

The United States must appear as a sole party for the protection of its own interests, the interests of its privies, and the interests of its donees, or such as have equitable claims in the nature of pre-emption rights.

II.

These interests must be consistent with each other, and must unite in making the same objections, and claiming the same boundaries. The act cannot be construed to allow one attorney to use the name of the United States to prove one boundary, and another in the same name to deny this boundary, and prove another.

The United States district attorney is not to surrender the Government to the attorneys mentioned in the act, but he may accept their aid in advocating such boundaries as it may appear to him proper. If one squatter's claim is adverse to another's, he cannot advocate both, nor permit others to do it in his name.

III.

In this case the United States appeared and filed exceptions in behalf of the pre-emptioners and purchasers under the United States, of the public lands bordering on the old Hays survey, whose interests were seriously threatened by the survey returned into court, and whose interests could only be protected by a strict adherance to the old Hays survey. These parties were represented by Andrew Glassell, Esq., (*Vide Rec.* 147, *and* 170.) Edmund Randolph, Esq., and John B. Williams, Esq., appeared for certain squatters who had seized some of the lands above Alder creek included in the Hays survey, and these parties gained a footing upon which to be heard in the case upon the allegation contained in the 3d exception filed by the United States district attorney, to the effect that eight leagues was more than was granted. The claims of the first named intervenors were identical with those of the claimants, and so far as they were concerned, there was no issue between the claimants and the United States. But the district attorney improperly suffered an issue to be made between the United States and the claimants, upon the allegation as to quantity.

IV.

And this issue as to quantity is the only question now before this Court. It is the only question which, even if the United States were allowed to file new exceptions, could possibly be made against the Hays survey, for the United States would be bound under all circumstances to protect the pre-emptioners and purchasers under it.

Election by the Grantee.

I.

Leidesdorff had a survey made in the summer of 1847 by a regular surveyor named John Halls (*Vide Halls' dep., Rec.* 142,) which survey was almost precisely like the Hays survey. Its

perpendicular lines ran due north and south, and the eastern line struck the river a little further up than the same line in the Hays' survey.

II.

Leidesdorff's tenant and herdsman pastured his large herds above Alder creek in 1846 and 1847. (*Vide Buzzle's dep.*, *Record*, 151.)

III.

Folsom, Leidesdorff's successor, always claimed the lands above Alder creek, and early in 1855 founded the town which bears his name, situated above Alder creek.

IV.

Folsom, in his lifetime, and his executors after his death, in 1856 and 1857 sold the allotments in said town to the inhabitants. And in December, 1857, sold all of the tract lying above Alder creek to the Natoma Water Company.

A. P. CATLIN,
Of Counsel for Appellees.

Over

McGill & Witherow, Printers, 366 E street, Washington, D. C.

The following is the opinion of the Commissioner of the General Land Office, referred to in 4th subdivision, on page 10 of this brief:

GENERAL LAND OFFICE,
May 4, 1858.

SIR:—I have the honor to submit herewith, the plat of survey and papers in the case of the "Rio de los Americanos" Rancho, confirmed to Joseph L. Folsom, No. 231, docket of California Commission. The survey in this case is contested by settlers on the eastern portion, and by P. Della Torre, United States District Attorney—on the ground that the east line of the survey is incorrectly laid down, the expediente and decree calling for the foot hills, while the contestants contend the said east line is carried far beyond the beginning of the *hills*, and thus the claim is made to embrace public lands.

The point to be decided, is the locality of said "foot hills." Affidavits are produced to locate the hills at or near (within half a mile of) the mouth of Alder creek. If located there it would be difficult to survey the claim so as to give it the form and dimensions prescribed in the grant and decree—that is, four leagues in length, along the river, by two leagues in width—for as the east line is required to be parallel with the west line, (Sutter's E. boundary,) it will be seen that by running a line south from the "mouth of Alder creek" for the east boundary, it would require a tract far different in form from that indicated in said grant and decree—that is, having less length along the river, and greater depth, running back from the river. (See plat.)

The whole argument of Mr. P. Della Torre, against the east line as fixed by the survey, rests upon the location of the "foot hills" at this point, the mouth of Alder creek, and the affidavits presented by him *there* fix the beginning. On the other hand, we have the affidavit of S. J. Hensley, recently filed in this office by Mr. Peachy, one of the executors of Folsom, who is well acquainted with the topography of that section of country, being an old resident, who in view of the plat, declares that the "foot hills" "do not come down to the limits of the survey;" that the hills may be said to begin between the town of Folsom (see map) and "Mormon Island," (which is beyond or east of the east boundary as fixed by the survey.) Mr. H.'s affidavit also explains a peculiar feature of the country in the eastern por-